



## AUSTRALIA, STATE AND TERRITORY OFFENCES RELATING TO TRAFFICKING IN PERSONS

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In Australia there is a comprehensive set of federal legislation that criminalises trafficking in persons, debt bondage, slavery, sexual servitude and deceptive recruiting.<sup>1</sup> At a State/Territory level there are no specific trafficking in persons offences, however, there are a variety of relevant offences that criminalise conduct associated with trafficking in persons such as sexual servitude and deceptive recruiting for sexual services. This document sets out and explores the relevant offences in the Australian States and Territories.

## 1. Background and Context

In 1998 the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General (MCCOC) released a *Report on Slavery Chapter 9: Offences against Humanity*, (the MCCOC Report).<sup>2</sup> The MCCOC Report recommended a number of model offences to criminalise modern slavery, sexual servitude and deceptive recruiting for sexual services. These model offences formed the basis of the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (Cth)*,<sup>3</sup> the first piece of Commonwealth legislation aimed at addressing slavery and, more generally, the issue of trafficking in persons.

The MCCOC Report noted that the States and Territories have traditionally retained the legislative jurisdiction to deal with general criminal law matters and that they were also the objectives of the old Imperial slavery legislation, which still applies today.<sup>4</sup> It was not until the passage of the *Australia Act 1986* that the States and Territories could actually legislate inconsistently with the applicable Imperial laws. The MCCOC Report cites this as the main reason no State or Territory has ever legislated in the area of slavery, although it is now possible if such a course of action was deemed appropriate. It was recommended by the MCCOC Report that so-called chattel slavery is more likely to occur in an international context, outside the territorial jurisdiction of State and Territory criminal law, and as such should be legislated against at the federal level.<sup>5</sup> The MCCOC Report further reasoned that international law and conventions are clear on their prohibition of chattel slavery and hence the Commonwealth mandate to legislate against slavery was also clear.<sup>6</sup>

The MCCOC Report, however, specifically noted that there are ‘modern instances of servitude or slave-like conditions [which] centrally involve State and Territory interests. For example [...] servile sex industry practices are intimately tied up with local prostitution prohibition or regulation...and trafficking in children’.<sup>7</sup> Because the Commonwealth provisions are restricted, constitutionally, to only prohibiting sexual servitude and deceptive recruiting for sexual services that occurs to some extent outside of Australia, the MCCOC Report recommended that such conduct should also be criminalised at the State and Territory level.<sup>8</sup>

In light of these recommendations South Australia, New South Wales, the Northern Territory, Western Australia, Victoria, and the Australian Capital Territory implemented offences similar to

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<sup>1</sup> *Criminal Code (Cth) Divisions 270, 271.* See separate document at [www.law.uq.edu.au/humantrafficking](http://www.law.uq.edu.au/humantrafficking).

<sup>2</sup> Model Criminal Code Officers Committee, *Model Criminal Code — Offences Against Humanity — Slavery* (1998).

<sup>3</sup> No. 104 of 1999.

<sup>4</sup> Model Criminal Code Officers Committee, *Model Criminal Code — Offences Against Humanity — Slavery* (1998) 12.

<sup>5</sup> Model Criminal Code Officers Committee, *Model Criminal Code — Offences Against Humanity — Slavery* (1998) 14.

<sup>6</sup> Model Criminal Code Officers Committee, *Model Criminal Code — Offences Against Humanity — Slavery* (1998) 15.

<sup>7</sup> Model Criminal Code Officers Committee, *Model Criminal Code — Offences Against Humanity — Slavery* (1998) 15.

<sup>8</sup> Model Criminal Code Officers Committee, *Model Criminal Code — Offences Against Humanity — Slavery* (1998) 17.

those recommended by the MCCOC Report and found in Division 270 of the Commonwealth *Criminal Code* (excluding slavery offences). A number of these jurisdictions have developed or expanded upon the recommended offences. Notably, Victoria and South Australia have altered the model offences quite substantially, while New South Wales decided against including deceptive recruiting for sexual services offences. Furthermore, the Northern Territory and Australian Capital Territory introduced a unique 'reasonable adult test' for determining whether someone is in sexual servitude. There is also some variability between the jurisdictions in terms of the mental elements specified and whether the definition of 'sexual servitude' and 'sexual services' requires some commercial aspect. It should be further noted that no State or Territory with an offence of deceptive recruiting for sexual services has amended this offence to reflect the changes made to the Commonwealth equivalent in 2005.<sup>9</sup> The penalties for the State and Territory sexual servitude offences are, however, largely comparable to the Commonwealth offences.

Queensland and Tasmania have not created any offences to satisfy the recommendations of the MCCOC Report. This potentially creates a legislative gap in what was intended to be a 'national scheme' of laws prohibiting sexual servitude and deceptive recruiting for sexual services. These States do have other, albeit limited, criminal offences that could potentially be used to prosecute incidents of trafficking in persons, for example, procuring a person to engage in sexual acts by coercion.

It should be noted that all of the offences outlined in this document cover purely domestic activity. All of the States and Territories also have a range of ordinary criminal offences (such as rape, assault, unlawful confinement, and sexual assault) which could be expected to cover domestic trafficking related activity, both sexual and non-sexual. These offences will not be discussed here.

## 2. New South Wales

In 2001, the *Crimes Amendment (Sexual Servitude) Act 2001* (NSW)<sup>10</sup> inserted a new Division 10A – Sexual Servitude into the *Crimes Act 1900* (NSW). This Division was designed to prohibit the 'reprehensible practice of forcing women and children to serve as sex-slaves' through the introduction of sexual servitude provisions.<sup>11</sup> The offences were introduced as part of the scheme of national laws recommended by the MCCOC Report.<sup>12</sup> The laws were thus intended to 'complement the existing Commonwealth laws and ensure that in New South Wales there is no legislative gap through which sex slave traders can slip.'<sup>13</sup> Provisions regarding deceptive recruiting were not included in the Act despite being recommended by the MCCOC Report; the justification for this omission is discussed in section 2.4.

The *Crimes Amendment (Sexual Servitude) Act 2001* created two offences to prohibit sexual servitude, both of which mirror the wording of their Commonwealth equivalents: (1) causing sexual servitude, and (2) conducting a business involving a slave.<sup>14</sup> The penalty for both offences is imprisonment for 15 years. If the victim is a child or a person suffering from a serious intellectual disability the maximum penalty is 19 years imprisonment. These penalties

<sup>9</sup> Section 270.7 ('Deceptive recruiting for sexual services') of the *Criminal Code* (Cth) was amended by the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth) s 6 to create a substantive list of information a person may be deceived about and evidence that can be used to prove this.

<sup>10</sup> No. 99 of 2001.

<sup>11</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11819 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

<sup>12</sup> See the introduction to this document.

<sup>13</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11820 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

<sup>14</sup> These offences mirror s 270.6(1) and (2) of the *Criminal Code* (Cth).

are comparable to those of the Commonwealth offences and the MCCOC Report recommendations.<sup>15</sup> These offences and the relevant definitions are set out below.

It should also be noted that s 80F *Crimes Act 1900* (NSW) provides that if a jury finds someone is not guilty of an aggravated offence, it may find the accused guilty of the lesser offence if it is satisfied on the evidence that the accused is guilty of the lesser offence.

## 2.1 Case law

To date the only case that has been prosecuted under State/Territory sexual servitude laws is the NSW case of *DPP v Xu* [2005]<sup>16</sup>. This case involved the owners of a Sydney brothel, Ms Sally Ciu Mian Xu and Ms Ngoc Lan Tran, and their co-accused, brothel manager Mr Lin Qi. The accused were charged with sexual servitude offences for bringing women from Thailand to Australia. The original charges<sup>17</sup> under the federal offences were retracted and replaced with their New South Wales equivalents<sup>18</sup>. One of the victims, 22-year old Thai woman Rattanavan Kachenchart had called “000” to notify the authorities of her situation. She testified that she was promised waitressing work in Australia but when she arrived in Australia in 2002 she was forced to work in Ms Xu’s and Ms Tran’s brothels. To pay off her \$200,000 debt she had to engage in sex acts with up to twenty different men a day and was not allowed to leave the premises.<sup>19</sup>

In April 2005, the District Court of New South Wales found Ms Xu not guilty of trading a sex slave and the jury was not able to reach a verdict on the other two accused.<sup>20</sup> There has thus been little interpretation or application of these offences.

## 2.2 Relevant definitions

Section 80B *Crimes Act 1900* (NSW) provides a definition of ‘sexual servitude’ that is identical to the Commonwealth equivalent.<sup>21</sup> The definition was drafted to require threats of other detrimental action be unreasonable in order to ensure that the Act did not ‘interfere with the existing laws regulating prostitution in [the] State.’<sup>22</sup> It was therefore intended that the definition of sexual servitude not apply to the usual employment conditions for sex workers.<sup>23</sup>

<sup>15</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11820 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

<sup>16</sup> NSWSC 191; (2005) 154 A Crim R 173. For further information see case reports at [www.law.uq.edu.au/humantrafficking](http://www.law.uq.edu.au/humantrafficking)

<sup>17</sup> *Criminal Code* (Cth) s 270.6(1) & (2).

<sup>18</sup> *Crimes Act 1900* s 80D(1), 80E(1).

<sup>19</sup> Lisa Davies, “Prostitute supports Thai ‘sex-slave’ claims” (21 Apr 2005) *The Daily Telegraph* (Sydney), 22.

<sup>20</sup> Natasha Robinson, “Second sex slave jury fails to deliver verdict” (28 May 2005) *The Australian* (Sydney), 8; *DPP (Cth) v Cui Mian Xu* [2005] (10, 17 Mar 2005) Supreme Court of New South Wales, unreported, BC200501399; Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): Australian Institute of Criminology, 2008, 49 (with reference to the unpublished court transcripts); “Trio on trial accused of keeping student as sex slave” (22 Mar 2005) *Sydney Morning Herald*, available at <[www.smh.com.au/news/National/Trio-on-trial-accused-of-keeping-student-as-sex-slave/2005/03/22/1111254019070.html](http://www.smh.com.au/news/National/Trio-on-trial-accused-of-keeping-student-as-sex-slave/2005/03/22/1111254019070.html)> at 28 Aug 2008.

<sup>21</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11820 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

<sup>22</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11820 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

<sup>23</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11820 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

S 80B Crimes Act 1900 (NSW)	Meaning of 'sexual servitude'
<b>Definition, s 80B(1)</b>	<b>Sexual servitude</b> is the condition of a person who provides sexual services and who, because of the use of force or threats: (a) is not free to cease providing sexual services, or (b) is not free to leave the place or area where the person provides sexual services.
<b>Related definitions, s 80B(2)</b>	<b>Sexual service</b> means the commercial use or display of the body of the person providing the service for the sexual arousal or sexual gratification of others.  <b>Threat</b> means: (a) a threat of force, or (b) a threat to cause a person's deportation, or (c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

The definition in the table below of 'circumstances of aggravation' is relevant in proving the aggravated form of both offences created in Division 10A.

S 80C Crimes Act 1900 (NSW)	Meaning of 'circumstances of aggravation'
<b>Definition, s 80C</b>	<b>Circumstances of aggravation</b> means circumstances involving either or both of the following: (a) the alleged victim is under the age of 18 years, (b) the alleged victim has a cognitive impairment (within the meaning of Division 10).

### 2.3 Causing sexual servitude

Section 80D sets out the offence of 'causing sexual servitude'. The offence is committed if a person causes the sexual servitude of another and intends to cause that sexual servitude, or is reckless as to causing such sexual servitude. It was rationalised that recklessness be included as a possible mental element because 'the circumstances envisaged by the offences are so serious that the law can expect persons to consider their actions very carefully in this area.'<sup>24</sup>

S 80D Crimes Act 1900 (NSW)	Causing sexual servitude	
Elements	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>A person;</li> <li>causes another person to enter into or remain in sexual servitude.</li> </ul>	<ul style="list-style-type: none"> <li>Intention or recklessness as to causing that sexual servitude.</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>Maximum penalty - imprisonment for 15 years.</li> </ul>	
<b>Aggravated offence, s 80D(2)</b>	<ul style="list-style-type: none"> <li>Offence committed in <b>circumstances of aggravation</b> (ie the alleged victim is under the age 18 years or has a cognitive impairment).</li> <li><b>Penalty:</b> Maximum penalty - imprisonment for 19 years.</li> </ul>	

### 2.4 Conducting a business involving a slave

The second offence created by the *Crimes Amendment (Sexual Servitude) Act 2001* (NSW) makes 'conducting a business involving a slave' an offence, s 80E. The offence is committed if a person conducts any business that involves the sexual servitude of others and knows about, or is reckless as to, that sexual servitude. The offence was designed to extend to 'any person that has any control or direction over the business or, while not being involved in the business

<sup>24</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11820 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

itself, provides finance for the business.<sup>25</sup> The rationale behind the offence was that it targets 'the "Mr Bigs" of the international trafficking in sex slaves' and it was intended that the offence would serve to catch those 'who hide behind others and those who support the trade.'<sup>26</sup>

S 80E Crimes Act 1900 (NSW)		
Conducting a business involving a slave		
Elements	Physical Elements	Mental Elements
		<ul style="list-style-type: none"> <li>A person;</li> <li>conducts any business that involves the sexual servitude of other persons.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>Maximum penalty - imprisonment for 15 years.</li> </ul>	
Aggravated offence, s 80E(2)	<ul style="list-style-type: none"> <li>Offence committed in <b>circumstances of aggravation</b> (i.e. the alleged victim is under the of age 18 years or has a cognitive impairment).</li> <li><b>Penalty:</b> Maximum penalty - imprisonment for 19 years.</li> </ul>	
Relevant definitions, s 80E(3)	<ul style="list-style-type: none"> <li><b>Conducting a business</b> includes: <ul style="list-style-type: none"> <li>(a) taking any part in the management of the business, or</li> <li>(b) exercising control or direction over the business, or</li> <li>(c) providing finance for the business.</li> </ul> </li> </ul>	

## 2.5 Deceptive recruiting

Upon introduction of the *Crimes Amendment (Sexual Servitude) Bill 2001* (NSW) into the Legislative Council it was highlighted that the Commonwealth offence of deceptive recruiting for sexual services<sup>27</sup> had not been reproduced in the Bill. It was asserted that inclusion of this offence in the New South Wales Bill 'would have been broader in its scope than was necessary to deal with deceptive recruiting for sexual servitude.'<sup>28</sup> The justification for this was that 'New South Wales already has offences that more than adequately cover this area.'<sup>29</sup> It was stated in the Parliamentary Debates that the relevant current offences include:

s 91A and s 91B of the *Crimes Act 1900* (procuring), s 91D of the *Crimes Act 1900* (promoting or engaging in Acts of child prostitution) and s 15A of the *Summary Offences Act 1988* (causing or inducing prostitution). The current offences already include within their elements procuring by "any fraud" (s 91B *Crimes Act 1900*) and in relation to children inducing by "any means" (s 91D *Crimes Act 1900*).<sup>30</sup>

It was further highlighted that the penalty for the *Model Criminal Code* offence of deceptive recruiting is identical to the current offence of procuring (7 years imprisonment).<sup>31</sup>

<sup>25</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11819 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

<sup>26</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11820 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

<sup>27</sup> *Criminal Code* (Cth) s 270.7.

<sup>28</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11820 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

<sup>29</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11820 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

<sup>30</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11821 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

<sup>31</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 27 Nov 2001, 11821 (Michael Egan, Treasurer, Minister for State Development, and Vice-President of the Executive Council).

### 3. South Australia

In 2000, the *Criminal Law Consolidation (Sexual Servitude) Amendment Act 2000 (SA)*<sup>32</sup> was passed to repeal four old offences in the *Criminal Law Consolidation Act 1935 (SA)* regarding procuring sexual services and replace them with wider ranging laws against sexual servitude. The Act is based upon the sexual servitude provisions of the Commonwealth *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (Cth)* and recommendations of the MCCOC Report. South Australia was the first State/Territory jurisdiction to implement the recommendations of the MCCOC Report. It was stated in Parliamentary Debates that the Act 'targets traffickers, but at the domestic level. It covers conduct that occurs in South Australia'.<sup>33</sup>

The Act created three groups of offences in 'Division 12 – Commercial sexual services and related offences': (1) sexual servitude and related offences; (2) deceptive recruiting for commercial sexual services; and (3) use of children in commercial sexual services. The offences and relevant definitions (such as 'sexual servitude') introduced by South Australia do, in fact, vary quite substantially from the MCCOC Report model offences and those introduced at the Commonwealth level. The reason for this discrepancy was, however, not explained in the legislative material. Where offences are analogous to those at the Commonwealth level, the penalties are similar.

#### 3.1 Relevant definitions

S 65A <i>Criminal Law Consolidation Act 1935 (SA)</i>	Definitions relating to commercial sexual services
Definitions, s 65A(1)	<p><b>Ask</b> connotes a request made with serious intendment (as distinct from one made without an actual intention of obtaining the ostensible object of the request).</p> <p><b>Child</b> means a person under the age of 18 years.</p> <p><b>Commercial sexual services</b> means services provided for payment involving the use or display of the body of the person who provides the services for the sexual gratification of another or others.</p> <p><b>Compulsion</b>—a person compels another (the <b>victim</b>) if the person controls or influences the victim's conduct by means that effectively prevent the victim from exercising freedom of choice.</p> <p><b>Payment</b> includes any form of commercial consideration.</p> <p><b>Sexual servitude</b> means the condition of a person who provides commercial sexual services under compulsion.</p> <p><b>Undue influence</b>—a person exerts undue influence on another (the <b>victim</b>) if the person uses unfair or improper means to influence the victim's conduct.</p>
Recklessness, s 65A(2)	A person whose conduct causes a particular result is taken to have intended that result if the person is reckless about whether that result ensues.

#### 3.2 Sexual servitude related offences

Section 66 of the *Criminal Law Consolidation Act 1935 (SA)* provides two offences related to sexual servitude. Firstly it is an offence to compel another person to provide or to continue to

<sup>32</sup> No. 20 of 2000.

<sup>33</sup> South Australia, *Parliamentary Debates*, House of Assembly, 3 May 2000, 1403 (Mr Iain Evans, Minister for Environment and Heritage).

provide commercial sexual services. This is considered to be the aggravated offence under s 66.

S 66(1) <i>Criminal Law Consolidation Act 1935 (SA)</i>	Inflicting sexual servitude	
Elements	Physical Elements	Mental Elements
		<ul style="list-style-type: none"> <li>• A person;</li> <li>• compels another to provide or to continue to provide commercial sexual services.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>• If the victim is a child under the age of 14 years—imprisonment for life;</li> <li>• If the victim is a child under the age of 18 years—imprisonment for 19 years;</li> <li>• In any other case—imprisonment for 15 years.</li> </ul>	

A second offence is created in s 66(2) to legislate against a person using undue influence to get another to provide, or to continue to provide, commercial sexual services. This is the lesser offence under s 66. A person charged with an offence against the previous offence in s 66(1) (the aggravated offence) may be convicted, on that charge, of an offence against this offence (the lesser offence) if the court is not satisfied that the aggravated offence has been established beyond reasonable doubt but is satisfied that the lesser offence has been so established.

S 66(2) <i>Criminal Law Consolidation Act 1935 (SA)</i>	Commercial sexual services by way of undue influence	
Elements	Physical Elements	Mental Elements
		<ul style="list-style-type: none"> <li>• A person;</li> <li>• by undue influence;</li> <li>• gets another to provide, or to continue to provide commercial sexual services.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>• If the victim is a child under the age of 14 years—imprisonment for life;</li> <li>• If the victim is a child under the age of 18 years—imprisonment for 12 years;</li> <li>• In any other case—imprisonment for 7 years.</li> </ul>	

Sections 66(4)-(5) State that:

The question whether, in a particular case, a defendant's conduct amounts to compulsion or undue influence (or neither) is one of fact to be determined according to the circumstances of the particular case. Evidence of the following or any combination of the following may be relevant to that question—

- (a) fraud, misrepresentation or suppression of information;
- (b) force or a threat of force;
- (c) any other threat (including a threat to take action that may result in the victim's deportation or a threat to take other lawful action);
- (d) restrictions on freedom of movement;
- (e) supply, or withdrawal of supply, of an illicit drug;
- (f) abuse of a position of guardianship or trust;
- (g) any other form of unreasonable or unfair pressure.

<sup>34</sup> A person whose conduct causes a particular result is taken to have intended that result if the person is reckless about whether that result ensues: *Criminal Law Consolidation Act 1935 (SA)* s 65A(2).

<sup>35</sup> A person whose conduct causes a particular result is taken to have intended that result if the person is reckless about whether that result ensues: *Criminal Law Consolidation Act 1935 (SA)* s 65A(2).

### 3.3 Deceptive recruiting for commercial sexual services

The offence of deceptive recruiting for commercial sexual services provided in s 67 is noticeably more complicated than its Commonwealth counterpart but has a similar effect.

S 67 <i>Criminal Law Consolidation Act 1935 (SA)</i>	Deceptive recruiting for commercial sexual services	
Elements	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>• A person;</li> <li>• offers another (the <i>victim</i>) employment or some other form of engagement to provide personal services; <b>AND</b></li> <li>• fails to disclose that information (<i>refer to mental element of knowledge</i>) to the victim at the time of offering the employment or engagement.</li> </ul>	<ul style="list-style-type: none"> <li>• Intention or recklessness.<sup>36</sup></li> <li>• Knowledge at the time of making the offer— <ul style="list-style-type: none"> <li>○ that the victim will, in the course of or in connection with the employment or engagement, be asked or expected to provide commercial sexual services; <b>AND</b></li> <li>○ that the continuation of the employment or engagement, or the victim's advancement in the employment or engagement, will be dependent on the victim's preparedness to provide commercial sexual services.</li> </ul> </li> </ul>
Penalty	<ul style="list-style-type: none"> <li>• If the victim is a child—imprisonment for 12 years;</li> <li>• In any other case—imprisonment for 7 years.</li> </ul>	

### 3.4 Use of children in commercial sexual services

South Australia introduced a number of offences, specifically aimed at protecting children, which are not found in the MCCOC Report or the Commonwealth legislation. These offences include: employing or permitting a child to provide or continue provide commercial sexual services; asking a child to provide commercial sexual services, if it is a serious request; and benefiting financially from a child's involvement in commercial sexual services. These offences are detailed below. In proceedings for these offences, it is not necessary for the prosecution to establish that the defendant knew the victim of the alleged offence to be a child.<sup>37</sup> However, it is a defence to a charge of one of these offences if it is proved that the defendant believed on reasonable grounds that the victim had attained 18 years of age.<sup>38</sup>

<sup>36</sup> A person whose conduct causes a particular result is taken to have intended that result if the person is reckless about whether that result ensues: *Criminal Law Consolidation Act 1935 (SA)* s 65A(2).

<sup>37</sup> *Criminal Law Consolidation Act 1935 (SA)* s 68(4).

<sup>38</sup> *Criminal Law Consolidation Act 1935 (SA)* s 68(5).

S 68(1) <i>Criminal Law Consolidation Act 1935 (SA)</i>		
Employing, engaging, causing or permitting a child to provide commercial sexual services		
Elements	Physical Elements	Mental Elements
		<ul style="list-style-type: none"> <li>• A person;</li> <li>• employs, engages, causes or permits;</li> <li>• a child;</li> <li>• to provide, or to continue to provide, commercial sexual services.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>• If the child is under the age of 14 years—imprisonment for life;</li> <li>• In any other case—imprisonment for 9 years.</li> </ul>	

S 68(2) <i>Criminal Law Consolidation Act 1935 (SA)</i>		
Asking a child to provide commercial sexual services		
Elements	Physical Elements	Mental Elements
		<ul style="list-style-type: none"> <li>• A person;</li> <li>• asks a child to provide commercial sexual services.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>• If the child is under the age of 14 years—imprisonment for 9 years;</li> <li>• In any other case—imprisonment for 3 years.</li> </ul>	

S 68(3) <i>Criminal Law Consolidation Act 1935 (SA)</i>		
Receiving proceeds		
Elements	Physical Elements	Mental Elements
	<i>Arrangements, s 68(3)(a)</i>	<ul style="list-style-type: none"> <li>• Arrangement with a child who provides commercial sexual services;</li> <li>• receiving, on a regular or systematic basis, the proceeds, or a share in the proceeds, of commercial sexual services provided by the child; <b>OR</b></li> </ul>
<i>Exploitation, s 68(3)(b)</i>	<ul style="list-style-type: none"> <li>• Exploiting a child by obtaining money that is the proceeds of commercial sexual services provided by the child.</li> </ul>	<ul style="list-style-type: none"> <li>• Intention or recklessness.<sup>42</sup></li> <li>• Knowledge the money is the proceeds of commercial sexual services provided by the child.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>• If the child is under the age of 14 years—imprisonment for 5 years;</li> <li>• In any other case—imprisonment for 2 years.</li> </ul>	

<sup>39</sup> A person whose conduct causes a particular result is taken to have intended that result if the person is reckless about whether that result ensues: *Criminal Law Consolidation Act 1935 (SA)* s 65A(2).

<sup>40</sup> A person whose conduct causes a particular result is taken to have intended that result if the person is reckless about whether that result ensues: *Criminal Law Consolidation Act 1935 (SA)* s 65A(2).

<sup>41</sup> A person whose conduct causes a particular result is taken to have intended that result if the person is reckless about whether that result ensues: *Criminal Law Consolidation Act 1935 (SA)* s 65A(2).

<sup>42</sup> A person whose conduct causes a particular result is taken to have intended that result if the person is reckless about whether that result ensues: *Criminal Law Consolidation Act 1935 (SA)* s 65A(2).

## 4. Victoria

In 2004, Victoria introduced the *Justice Legislation (Sexual Offences and Bail) Act 2004 (Vic)*<sup>43</sup> which, among other provisions, inserted into the *Crimes Act 1958 (Vic)* a new subdivision '8EAA — Sexual Servitude'. This subdivision created four new offences relating to either sexual servitude or deceptive recruiting for commercial sexual services. The stated purpose of these offences is to 'combat the insidious and appalling trade in people for the purposes of forced prostitution and sexual exploitation'.<sup>44</sup> The offences are also designed to fill gaps in Victoria's existing criminal law to combat sexual servitude and to complement the existing Commonwealth sexual servitude laws.

The offences are based on the model offences recommended by the MCCOC Report and also aim to 'clarify and expand on the model in order to capture the range of exploitative conduct undertaken by traffickers'.<sup>45</sup> Concerned that the model offences did not cover the coercive use of debts by traffickers to keep a person in sexual servitude, the Act specifically refers to the use of a manifestly excessive debt being relevant to the issue of whether a person is not free to stop providing sexual services.<sup>46</sup> The model deceptive recruiting for sexual services offences were also expanded to include the use of fraud and misrepresentation. The aim of this is to assist in capturing a situation where, for example, 'a person is deceived about the extent of their debt, and whether their services are actually discharging the debt, and are therefore compelled to continue providing the sexual services'.<sup>47</sup>

Furthermore, the definition of 'sexual servitude' in the Victorian Act was changed:

Another concern with the model offences was that the definition of sexual servitude referred to a person not being free to leave the place or area where that person provides sexual services. Concerns were raised that this may not capture the other places in which a trafficker may restrict a person's freedom, for example locking them up in a residence or car. The [Act] clarifies this issue by referring to the use of unlawful detention generally, wherever that detention occurs.<sup>48</sup>

The penalties are, however, comparable to the Commonwealth equivalents.

### 4.1 Sexual servitude

#### 4.1.1 Relevant definitions

<b>Section 60AB(1)</b>	<p><b>Threat</b> means:</p> <p>(a) threat of force; or</p> <p>(b) threat to cause a person's deportation; or</p> <p>(c) threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of commercial sexual services.</p> <p><b>Commercial sexual services</b> means services for commercial benefit involving the use or display of the body of the person providing the services for the sexual arousal or sexual gratification of others.</p>
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<sup>43</sup> No. 20 of 2004.

<sup>44</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 Apr 2004, 716 (Robert Hulls, Attorney-General).

<sup>45</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 Apr 2004, 716 (Robert Hulls, Attorney-General).

<sup>46</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 Apr 2004, 716 (Robert Hulls, Attorney-General).

<sup>47</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 Apr 2004, 716 (Robert Hulls, Attorney-General).

<sup>48</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 Apr 2004, 716 (Robert Hulls, Attorney-General).

#### 4.1.2 Offences

The *Crimes Act 1958* (Vic) contains three main provisions to deal with sexual servitude as well as an aggravated offence to cover situations where a minor is the victim of one of the offences. The first provision, contained in s 60AB(2), makes it an offence to cause another person to provide commercial sexual services by using force, threats, unlawful detention, fraud, misrepresentation, or a manifestly excessive debt. In the Parliamentary Debates, then Attorney-General Robert Hulls stated that the offence 'would capture a person who uses violence or locks up a woman to compel her to provide commercial sexual services.'<sup>49</sup>

S 60AB(2) <i>Crimes Act 1958</i> (Vic)	Causing someone to provide, or continue to provide commercial sexual services	
<b>Elements</b>	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>A person, who by the use of:               <ol style="list-style-type: none"> <li>force; or</li> <li>a threat; or</li> <li>unlawful detention; or</li> <li>fraud or misrepresentation, including by deception; or</li> <li>a manifestly excessive debt</li> </ol> </li> <li>causes another person to provide, or to continue providing, commercial sexual services.</li> </ul>	<ul style="list-style-type: none"> <li>None specified.</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>Liable to level 4 imprisonment (15 years maximum).</li> </ul>	

Section 60AB(3) makes it an offence to cause or induce a person to provide commercial sexual services knowing that (or being reckless about whether) the person will not be free to stop providing those services because of the use of force, threats, unlawful detention, fraud, misrepresentation, or a manifestly excessive debt. An example of the potential use of the offence was offered in the Parliamentary Debates:

This offence would capture a recruiter, for example, who may not actually use force or threats against the woman, but knows his colleagues will use these coercive methods down the track to ensure she is not free to stop providing the sexual services.<sup>50</sup>

S 60AB(3) <i>Crimes Act 1958</i> (Vic)	Inducing or causing someone to provide commercial sexual services	
<b>Elements</b>	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>A person causes or induces another person to provide commercial sexual services;</li> <li>by the use of:               <ol style="list-style-type: none"> <li>force; or</li> <li>a threat; or</li> <li>unlawful detention; or</li> <li>fraud or misrepresentation, including by deception; or</li> <li>a manifestly excessive debt</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>Knowledge that, or reckless as to whether, the other person providing those services will not be free to stop providing those services.</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>Liable to level 4 imprisonment (15 years maximum).</li> </ul>	

<sup>49</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 Apr 2004, 716 (Robert Hulls, Attorney-General).

<sup>50</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 Apr 2004, 716 (Robert Hulls, Attorney-General).

Section 60AB(4) makes it an offence to conduct a business that involves providing commercial sexual services, knowing (or being reckless as to whether) a person is not free to stop providing sexual services because of force, threats, unlawful detention, fraud or misrepresentation, or a manifestly excessive debt. The intended targets of this offence were stated as being ‘the organisers, managers and financiers of a business that involves sexual servitude.’<sup>51</sup>

S 60AB(4) <i>Crimes Act 1958</i> (Vic)	Conducting a business that involves providing commercial sexual services	
<b>Elements</b>	<b>Physical Elements</b> <ul style="list-style-type: none"> <li>Conducting a business that involves the provision of commercial sexual services;</li> <li>by the use of: <ul style="list-style-type: none"> <li>(a) force; or</li> <li>(b) a threat; or</li> <li>(c) unlawful detention; or</li> <li>(d) fraud or misrepresentation, including by deception; or</li> <li>(e) a manifestly excessive debt</li> </ul> </li> </ul>	<b>Mental Elements</b> <ul style="list-style-type: none"> <li>Knowledge that, or reckless as to whether, the other person providing those services will not be free to stop providing those services.</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>Liable to level 4 imprisonment (15 years maximum).</li> </ul>	

S 60AC <i>Crimes Act 1958</i> (Vic)	Aggravated sexual servitude	
<b>Elements</b>	<b>Physical Elements</b> <ul style="list-style-type: none"> <li>Offence against s 60AB(2),(3) or (4)</li> <li>Person under 18</li> </ul>	<b>Mental Elements</b> <ul style="list-style-type: none"> <li>Intention or recklessness about committing the offence against a person under 18.</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>Liable to level 3 imprisonment (20 years maximum).</li> </ul>	

## 4.2 Deceptive recruiting for commercial sexual services

Section 60AD makes it an offence to induce a person to become a sex worker by deceiving them about the fact that the work will involve providing sexual services. The justification for this offence was that it would ‘address situations where people, particularly children, are vulnerable to sexual exploitation.’<sup>52</sup> In order to establish this offence, it is not necessary to prove that sexual servitude resulted or was even intended by the offender. The offence is identical to the original deceptive recruiting offence introduced by the Commonwealth and recommended by the MCCOC Report.

<sup>51</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 Apr 2004, 716 (Robert Hulls, Attorney-General).

<sup>52</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 Apr 2004, 716 (Robert Hulls, Attorney-General).

S 60AD Crimes Act 1958 (Vic)		
Deceptive recruiting for commercial sexual services		
Elements	Physical Elements	Mental Elements
		<ul style="list-style-type: none"> <li>Inducing another person to enter into an engagement to provide commercial sexual services;</li> <li>deception about the fact that the engagement will involve the provision of commercial sexual services.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>Liable to level 6 imprisonment (5 years maximum).</li> </ul>	
Relevant definitions	<ul style="list-style-type: none"> <li><b>Commercial sexual services</b> means services for commercial benefit involving the use or display of the body of the person providing the services for the sexual arousal or sexual gratification of others, s 60AD(2).</li> </ul>	

S 60AD Crimes Act 1958 (Vic)		
Aggravated deceptive recruiting for commercial sexual services		
Elements	Physical Elements	Mental Elements
		<ul style="list-style-type: none"> <li>Offence against section 60AD</li> <li>The offence was committed against a person under the age of 18 years</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>Liable to level 5 imprisonment (10 years maximum).</li> </ul>	

## 5. Western Australia

In Western Australia the *Criminal Code* (WA) contains three relevant offences: (1) sexual servitude; (2) conducting a business involving sexual servitude; and (3) deceptive recruiting for commercial sexual services. These offences are a response to the recommendations of the MCCOC Report and are modelled on the equivalent provisions found in the Commonwealth and Australian Capital Territory legislation.<sup>53</sup> Unlike other jurisdictions, the definition of 'sexual service' and the sexual servitude offences do not require the service to be commercial; this commercial context is only required in relation to the deceptive recruiting offences.

### 5.1 Relevant definitions

<b>Section 331A</b>	<p><b>Child</b> means a person under the age of 18 years.</p> <p><b>Incapable person:</b> A person who is so mentally impaired as to be incapable —</p> <p>(a) of understanding the nature of the act the subject of the charge against the accused person;  <b>OR</b>            (b) of guarding himself or herself against sexual exploitation. (s 330)</p> <p><b>Sexual service</b> means the use or display of the body of the person providing the service for the sexual arousal or sexual gratification of others.</p>
<b>Section 331(c)</b>	<p><b>Conducting a business</b> includes —</p> <p>(a) taking part in the management of the business;            (b) exercising control or direction over the business; and            (c) providing finance for the business.</p>

<sup>53</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 3 April 2003, 6169 (Mr Jim McGinty, Attorney-General).

## 5.2 Sexual servitude

The offence of sexual servitude is identical to that found in the Commonwealth *Criminal Code*, although the mental element is specified to be intention or recklessness at the Commonwealth level.

S 331B <i>Criminal Code</i> (WA)	Sexual servitude	
Elements	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>A person;</li> <li>compels another person to provide or to continue to provide a sexual service.</li> </ul>	<ul style="list-style-type: none"> <li>None specified.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>If the other person is a child or an incapable person, to imprisonment for 20 years; <b>OR</b></li> <li>Otherwise, to imprisonment for 14 years.</li> </ul>	

## 5.3 Conducting a business involving sexual servitude

The offence of conducting a business involving sexual servitude in Western Australia is almost identical to the Commonwealth equivalent but does not have the mental element of knowledge or recklessness. The MCCOC Report and other jurisdictions have all included this as a mental element in this offence, however its absence is not explained in the legislative material.

S 331C <i>Criminal Code</i> (WA)	Conducting a business involving sexual servitude	
Elements	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>A person;</li> <li>conducts a business;</li> <li>the business involves any other person being compelled to provide or to continue to provide;</li> <li>a sexual service.</li> </ul>	<ul style="list-style-type: none"> <li>None specified.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>If the other person is a child or an incapable person, to imprisonment for 20 years; <b>OR</b></li> <li>Otherwise, to imprisonment for 14 years.</li> </ul>	

## 5.4 Deceptive recruiting for commercial sexual services

The Western Australian offence of deceptive recruiting for commercial sexual services and its aggravated form are substantially different to the Commonwealth equivalent but identical to the equivalent provision in South Australia. The reason for such variation is not explained in the legislative material. The penalties are, however, the same as those recommended by the MCCOC Report and found in the Commonwealth *Criminal Code*.

S 331D <i>Criminal Code</i> (WA)		
Deceptive recruiting for commercial sexual services		
Elements	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>• A person;</li> <li>• offers a person who is neither a child nor an incapable person (the <b>victim</b>) employment or some other form of engagement to provide personal services;</li> <li>• does not disclose that knowledge (<i>refer to mental element of knowledge</i>) to the victim at the time of making the offer.</li> </ul>	<ul style="list-style-type: none"> <li>• Knowledge at the time of making the offer — <ul style="list-style-type: none"> <li>○ that the victim will in the course of or in connection with the employment or engagement be asked or expected to provide a commercial sexual service;</li> </ul> </li> <li><b>AND</b></li> <li>○ that the continuation of the employment or engagement, or the victim's advancement in the employment or engagement, will be dependent on the victim's preparedness to provide a commercial sexual service.</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>• Imprisonment for 7 years.</li> </ul>	

S 331D <i>Criminal Code</i> (WA)		
Deceptive recruiting for commercial sexual services – child or incapable person		
Elements	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>• A person;</li> <li>• offers a child or an incapable person (the <b>victim</b>) employment or some other form of engagement to provide personal services.</li> </ul>	<ul style="list-style-type: none"> <li>• Knowledge at the time of making the offer — <ul style="list-style-type: none"> <li>○ that the victim will in the course of or in connection with the employment or engagement be asked or expected to provide a commercial sexual service;</li> </ul> </li> <li><b>AND</b></li> <li>○ that the continuation of the employment or engagement, or the victim's advancement in the employment or engagement, will be dependent on the victim's preparedness to provide a commercial sexual service.</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>• Imprisonment for 20 years.</li> </ul>	

## 6. Northern Territory

The *Criminal Code Amendment Act 2002* (NT)<sup>54</sup> inserted offences related to sexual servitude and deceptive recruiting into the *Criminal Code* (NT). Like other States that implemented the MCCOC Report's recommendations, the Northern Territory Government intended that the Act would 'form a part of a package of complementary State/Territory laws.'<sup>55</sup> It was stated that the Act would 'prohibit persons forcing people to act as prostitutes within Australia. It also makes it an offence to recruit for commercial sexual services using deception and to use children in any way for commercial sexual purposes.'<sup>56</sup> Furthermore, there are aggravated offences relating to situations where a minor is the victim of one of the offences. In relation to this, s 202E provides that:

<sup>54</sup> No. 5 (Serial 23).

<sup>55</sup> Northern Territory, *Parliamentary Debates*, Legislative Assembly, 27 November 2001, 1 (Dr Peter Toyne, Justice and Attorney-General).

<sup>56</sup> Northern Territory, *Parliamentary Debates*, Legislative Assembly, 27 November 2001, 1 (Dr Peter Toyne, Justice and Attorney-General).

It is immaterial in relation to a crime referred to in this Division committed with respect to a person who was at the time of the crime a child, or a child of a specified age, that the accused person:

- (a) did not know that the person was a child or a child of a specified age; or
- (b) believed that the person was an adult or a child of a different age.

The Northern Territory offences outlined below are substantially the same as the Commonwealth equivalents.

## 6.1 Relevant definitions

The Northern Territory followed the Australian Capital Territory in providing a 'reasonable adult test' such that 'the question of whether a person is in sexual servitude will be a question of fact to be determined according to whether a reasonable adult would consider in the circumstances that a person is not free to stop providing services or leave the place or area'.<sup>57</sup> There was no justification in the parliamentary debates as to the inclusion of this unique test.

<b>S 202A(1)</b>	<p><b>Sexual services</b> means the commercial use or display of the body of the person providing the services for the sexual gratification of others.</p> <p><b>Sexual servitude</b> means the condition of a person who provides sexual services and who, because of the use of force or threat, is not free:</p> <ul style="list-style-type: none"> <li>(a) to stop providing sexual services; or</li> <li>(b) to leave the place or area where the person provides sexual services.</li> </ul> <p><b>Threat</b> means:</p> <ul style="list-style-type: none"> <li>(a) a threat of force;</li> <li>(b) a threat to cause a person's deportation; or</li> <li>(c) a threat of other detrimental action</li> </ul>
<b>S 202A(2)</b> <i>The 'Reasonable Adult Test'</i>	<p>The question whether, because of the use of force or a threat, a person is not free:</p> <ul style="list-style-type: none"> <li>(a) to stop providing sexual services; or</li> <li>(b) to leave the place or area where the person provides sexual services,</li> </ul> <p>is to be decided according to whether a reasonable adult would consider, in the circumstances, that the person is not free to stop providing the services or to leave the place or area.</p>

## 6.2 Sexual servitude

The first provision, contained in s 202B, makes it an offence to cause another person to enter into, or continue in, sexual servitude. During the presentation of the Bill, then Justice and Attorney-General Dr Toyne stated that the offence is 'required to prohibit persons forcing people to act as prostitutes within Australia'.<sup>58</sup>

<sup>57</sup> Northern Territory, *Parliamentary Debates*, Legislative Assembly, 27 November 2001, 1 (Dr Peter Toyne, Justice and Attorney-General).

<sup>58</sup> Northern Territory, *Parliamentary Debates*, Legislative Assembly, 27 November 2001, 1 (Dr Peter Toyne, Justice and Attorney-General).

S 202B <i>Criminal Code</i> (NT)	Sexual Servitude	
<b>Elements</b>	<b>Physical Elements</b>	<b>Mental Elements</b>
	<ul style="list-style-type: none"> <li>Causing an adult or child to enter into, or continue in, sexual servitude<sup>59</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>None specified</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>15 years imprisonment.</li> <li>20 years imprisonment if child is 12 or older.</li> <li>Life imprisonment if child is under the age of 12.</li> </ul>	

Section 202C makes it an offence to conduct a business involving sexual servitude.

S 202C <i>Criminal Code</i> (NT)	Conducting a business involving sexual servitude	
<b>Elements</b>	<b>Physical Elements</b>	<b>Mental Elements</b>
	<ul style="list-style-type: none"> <li>A person who conducts a business;</li> <li>business involves sexual servitude<sup>60</sup> of adults or children.</li> </ul>	<ul style="list-style-type: none"> <li>None specified.</li> </ul>
<b>Interpretation</b>	<ul style="list-style-type: none"> <li>A reference to a person who conducts a business includes a reference to:               <ol style="list-style-type: none"> <li>a person who takes part in the management of the business;</li> <li>a person who exercises control or direction over the business;</li> </ol>               and               <ol style="list-style-type: none"> <li>a person who provides finance for the business.</li> </ol> </li> </ul>	
<b>Penalty</b>	<ul style="list-style-type: none"> <li>15 years imprisonment.</li> <li>20 years imprisonment if child is 12 or older.</li> <li>Life imprisonment if child is under the age of 12.</li> </ul>	

### 6.3 Deceptive recruiting for sexual services

Section 202D makes it an offence to induce a person into an engagement to provide sexual services where there is deception about the fact that the engagement will involve the provision of sexual services. While existing Commonwealth legislation applies where the conduct has an international element, Justice and Attorney-General Dr Toyne highlighted the need for such an offence as a compliment to Commonwealth legislation in an attempt to comprehensively prohibit such conduct within Australia.<sup>61</sup> It should be noted that this offence is identical to the original Commonwealth deceptive recruiting offences but does not reflect amendments made in 2005. Furthermore, the penalties are significantly higher than those in the Commonwealth *Criminal Code*.

<sup>59</sup> The question of whether someone is in sexual servitude should be determined according to the definition of 'sexual servitude' in s 202A(1) and the 'reasonable adult test' in s 202A(2). This test and the relevant definitions are outlined in section 6.1 of this document.

<sup>60</sup> The question of whether someone is in sexual servitude should be determined according to the definition of 'sexual servitude' in s 202A(1) and the 'reasonable adult test' in s 202A(2). This test and the relevant definitions are outlined in section 6.1 of this document.

<sup>61</sup> Northern Territory, *Parliamentary Debates*, Legislative Assembly, 27 November 2001, 1 (Dr Peter Toyne, Justice and Attorney-General).

S 202D Criminal Code (NT)	Deceptive recruiting for sexual services	
Elements	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>Induce another person into an engagement to provide sexual services;</li> <li>deceives that person about the fact that the engagement will involve provision of sexual services.</li> </ul>	<ul style="list-style-type: none"> <li>Intention to induce another person into an engagement to provide sexual services.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>10 years imprisonment.</li> <li>15 years imprisonment if victim is a child.</li> </ul>	

## 7. Australian Capital Territory

The *Crimes Amendment Act 2000* (ACT)<sup>62</sup> amended the *Crimes Act 1900* (ACT) to create offences relating to sexual servitude and deceptive recruiting for sexual services. The offences inserted were based on the model provisions recommended by the MCCOC Report and it was intended that they would form 'part of a package of complementary State and Territory laws that will operate where the conduct relating to sexual servitude or deceptive recruiting for sexual services takes place within Australia.'<sup>63</sup> The offences introduced in this Act are almost exactly the same as the Commonwealth equivalents.

### 7.1 Relevant definitions

The Australian Capital Territory made the interesting decision to include a 'reasonable adult test' such that 'the question of whether a person is in sexual servitude will be a question of fact to be determined according to whether a reasonable adult would consider in the circumstances that a person is not free to stop providing services or leave the place or area'.<sup>64</sup> There was no justification in the parliamentary debates as to the inclusion of this unique test. The Northern Territory is the only other jurisdiction in Australia to have introduced this test.

<b>Section 78(1)</b>	<p><b>Sexual services</b> means the commercial use or display of the body of the person providing the service for the sexual gratification of others.</p> <p><b>Sexual servitude</b> is the condition of a person who provides sexual services and who, because of the use of force or a threat, is not free—</p> <p>(a) to stop providing sexual services; or</p> <p>(b) to leave the place or area where the person provides sexual services.</p>
<b>Section 78(2)</b> <i>The 'Reasonable Adult Test'</i>	The question whether, because of the use of force or a threat, a person is not free to stop providing sexual services, or to leave the place or area where the person provides sexual services, is to be decided according to whether a reasonable adult would consider, in the circumstances, that the person is not free to stop or leave.
<b>Section 78(3)</b>	<p><b>Threat means—</b></p> <p>(a) a threat of force; or</p> <p>(b) a threat to cause a person's deportation; or</p> <p>(c) a threat of other detrimental action unless there are reasonable grounds for the threat.</p>
<b>Section 79(3)</b>	<p><b>Conducts a business</b> includes—</p> <p>(a) taking part in the management of the business; or</p>

<sup>62</sup> No 8 of 2001.

<sup>63</sup> Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 7 December 2000, 3810 (Gary Humphries, Chief Minister, Minister for Community Affairs, Attorney-General and Treasurer).

<sup>64</sup> Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 7 December 2000, 3811 (Gary Humphries, Chief Minister, Minister for Community Affairs, Attorney-General and Treasurer).

- (b) exercising control or direction over the business; or
- (c) providing finance for the business.

## 7.2 Sexual servitude

The *Criminal Code* (ACT) makes it an offence to cause someone to enter into, or remain in, sexual servitude. It is also an offence to conduct a business that involves the sexual servitude of others. It was stated in the Parliamentary Debates that: ‘These provisions target people who, by the use of force or threat, assert a degree of dominance over a worker that effectively denies the worker the freedom to stop providing sexual services or to leave the place where the services are being provided.’<sup>65</sup> In contrast to other States and even the federal legislation, the question of whether a person is in sexual servitude is stated to be a question of fact to be determined on a case-by-case basis according to a reasonable adult person test.<sup>66</sup>

S 79(1) <i>Criminal Code</i> (ACT)	Causing sexual servitude	
<b>Elements</b>	<b>Physical Elements</b>	<b>Mental Elements</b>
	<ul style="list-style-type: none"> <li>• The person’s conduct causes someone else to enter into or remain in sexual servitude<sup>67</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>• The person intends to cause, or is reckless about causing, someone else to enter into or remain in sexual servitude.</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>• For an aggravated offence—imprisonment for 19 years; or</li> <li>• In any other case—imprisonment for 15 years.</li> </ul>	

S 79(2) <i>Criminal Code</i> (ACT)	Conducting business involving sexual servitude	
<b>Elements</b>	<b>Physical Elements</b>	<b>Mental Elements</b>
	<ul style="list-style-type: none"> <li>• The person conducts a business that involves the sexual servitude<sup>68</sup> of others.</li> </ul>	<ul style="list-style-type: none"> <li>• The person knows that, or is reckless about whether, the business involves the sexual servitude of others.</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>• For an aggravated offence—imprisonment for 19 years; or</li> <li>• In any other case—imprisonment for 15 years.</li> </ul>	

## 7.3 Deceptive recruiting for sexual services

Section 80 of the *Criminal Code* (ACT) makes it an offence to deceive another person about the fact that they are being recruited for sex work. It was stated in the Parliamentary Debates that ‘it is not necessary that the deception involve an element of sexual servitude.’<sup>69</sup> This offence

<sup>65</sup> Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 7 December 2000, 3811 (Gary Humphries, Chief Minister, Minister for Community Affairs, Attorney-General and Treasurer).

<sup>66</sup> *Crimes Act 1900* (ACT), s 78(2).

<sup>67</sup> The question of whether someone is in sexual servitude should be determined according to the definition of ‘sexual servitude’ in s 78(1) and the ‘reasonable adult test’ in s 78(2). This test and the relevant definitions are outlined in section 7.1 of this document.

<sup>68</sup> The question of whether someone is in sexual servitude should be determined according to the definition of ‘sexual servitude’ in s 78(1) and the ‘reasonable adult test’ in s 78(2). This test and the relevant definitions are outlined in section 7.1 of this document.

<sup>69</sup> Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 7 December 2000, 3811 (Gary Humphries, Chief Minister, Minister for Community Affairs, Attorney-General and Treasurer).

does not reflect the amendments made in 2005 to the Commonwealth offence of deceptive recruiting for sexual services.

S 80 <i>Criminal Code</i> (ACT)		
Deceptive recruiting for sexual services		
Elements	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>The person induces someone else to enter into an engagement to provide sexual services; and</li> <li>deceives the other person about the fact that the engagement will involve the provision of sexual services.</li> </ul>	<ul style="list-style-type: none"> <li>Intention to induce someone else to enter into an engagement to provide sexual services.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>For an aggravated offence—imprisonment for 9 years; or</li> <li>In any other case—imprisonment for 7 years.</li> </ul>	

#### 7.4 Aggravated offences

As outlined in the tables above, each offence provides a higher penalty where the offence is aggravated. An offence is aggravated if it was committed against a person younger than 18 years old.<sup>70</sup> Section 81(3) states that the prosecution must prove ‘that the defendant intended to commit, or was reckless about committing, the offence against a person younger than 18 years old.’ Furthermore, s 82 provides for an alternative verdict if the aggravated offence is not proven:

If, on trial for an aggravated offence against section 79 or 80, the jury is not satisfied that the defendant is guilty of an aggravated offence, but is otherwise satisfied that the defendant is guilty of an offence against the section, it may find the defendant not guilty of the aggravated offence but guilty of an offence against the section.

### 8. Queensland

In the Queensland *Criminal Code* (Qld) there are no offences specifically aimed at criminalising trafficking in persons or related activities such as sexual servitude. Notably, Queensland is one of only two Australian States or Territories not to follow the recommendations made by the MCCOC Report to introduce offences that mirror those in Division 270 of the Commonwealth *Criminal Code*.

There are, however, two offences that can be construed in a way relevant to trafficking in persons. Firstly, it is an offence to knowingly entice or recruit a person under 18 years or an intellectually impaired person in order to engage in carnal knowledge.<sup>71</sup> Secondly, It is an offence to knowingly entice or recruit a person by specified means to engage in a sexual act or to administer a substance with intent to stupefy or overpower a person to enable a sexual act to be engaged in with the person.<sup>72</sup> The elements of these offences are set out in the tables below. Both of these offences carry a maximum term of imprisonment for 14 years; this penalty is significantly higher than the analogous deceptive recruiting for sexual services offences at the Commonwealth level.

<sup>70</sup> *Crimes Act 1900* (ACT), s 81(1).

<sup>71</sup> *Criminal Code* (Qld) s 217.

<sup>72</sup> *Criminal Code* (Qld) s 218.

## 8.1 Procuring a young person etc for carnal knowledge

The offence contained in s 217 *Criminal Code* (Qld), outlined in the table below, is broadly relevant to trafficking in persons to the extent that it is a crime to knowingly entice or recruit for sexual exploitation a minor or intellectually impaired adult.

S 217 <i>Criminal Code</i> (Qld)	Procuring a young person etc. for carnal knowledge	
Elements	Physical Elements	Mental Elements
	<ul style="list-style-type: none"> <li>The accused procured a person; and</li> <li>That person was not an adult; or</li> <li>That person was an intellectually impaired person; and</li> <li>The person was procured to engage in carnal knowledge (either in Queensland or elsewhere).</li> </ul>	<ul style="list-style-type: none"> <li>None specified.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>Maximum penalty – imprisonment for 14 years.</li> </ul>	
Relevant Definitions	<ul style="list-style-type: none"> <li><b>Procure</b> means knowingly entice or recruit for the purposes of sexual exploitation (s 217).</li> <li><b>Carnal Knowledge</b> (s 6) <ul style="list-style-type: none"> <li>If carnal knowledge is used in defining an offence, the offence, so far as regards that element of it, is complete on penetration to any extent.</li> <li>Carnal knowledge includes sodomy.</li> </ul> </li> </ul>	

## 8.2 Procuring sexual acts by coercion etc.

Section 218 of the Queensland *Criminal Code* criminalises three scenarios that are commonly associated with trafficking in persons for the purposes of sexual exploitation: the use of threats or intimidation, false pretence or a drug to procure or enable a sex act to be engaged in with the victim.

S 218 <i>Criminal Code</i> (Qld)	Procuring sexual acts by coercion etc.	
	Physical Elements	Mental Elements
<b>S 218(1)(a)</b> <i>Threats or Intimidation</i>	<ul style="list-style-type: none"> <li>A person;</li> <li>by use of threats or intimidation of any kind;</li> <li>procures a person to engage in a sexual act;</li> <li>either in Queensland or elsewhere.</li> </ul>	<ul style="list-style-type: none"> <li>None specified.</li> </ul>
<b>S 218(1)(b)</b> <i>False pretence</i>	<ul style="list-style-type: none"> <li>A person;</li> <li>by a false pretence;</li> <li>procures a person to engage in a sexual act;</li> <li>either in Queensland or elsewhere.</li> </ul>	<ul style="list-style-type: none"> <li>None specified.</li> </ul>
<b>S 218(1)(c)</b> <i>Use of a drug</i>	<ul style="list-style-type: none"> <li>A person;</li> <li>administers to a person, or causes a person to take, a drug or other thing;</li> <li>to enable a sexual act to be engaged in with the person;</li> </ul>	<ul style="list-style-type: none"> <li>Intent to stupefy or overpower.</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>Maximum penalty - imprisonment for 14 years.</li> </ul>	
Relevant definitions	<ul style="list-style-type: none"> <li>A person engages in a <b>sexual act</b> if the person: (s 218(2)) <ul style="list-style-type: none"> <li>allows a sexual act to be done to the person's body; or</li> <li>does a sexual act to the person's own body or the body of another person; or</li> <li>otherwise engages in an act of an indecent nature with another person.</li> </ul> </li> <li>A <b>sexual act</b> is not limited to sexual intercourse or acts involving physical contact (s 218(3)).</li> <li><b>Procure</b> means knowingly entice or recruit for the purposes of sexual exploitation (s 218(4)).</li> </ul>	

## 9. Tasmania

The *Criminal Code* (Tas) contains no offences specifically related to trafficking in persons and Tasmania has not implemented the recommendations made by the MCCOC Report as to the creation of sexual servitude and deceptive recruiting for sexual services offences. However since 1987, the *Criminal Code* (Tas) has included an offence related to the forced or deceptive procuring of others for unlawful sexual intercourse.<sup>73</sup> This offence is relevant to the extent that it is similar to deceptive recruiting provisions in other States and would have a limited application in a trafficking in persons case. Specifically, it is an offence to procure a person by threats, intimidation or false pretences to have unlawful sexual intercourse.<sup>74</sup> The elements of this offence are set out below.

S 129 <i>Criminal Code</i> (Tas)	Procuring by threats, fraud or drugs	
Elements	Physical Elements	Mental Elements
<b>S 129(a)</b> <i>Threats or intimidation</i>	<ul style="list-style-type: none"> <li>• A person;</li> <li>• by threats or intimidation of any kind;</li> <li>• procures another person to have unlawful sexual intercourse;</li> <li>• either in this State or elsewhere.</li> </ul>	<ul style="list-style-type: none"> <li>• Intention (s 13).</li> </ul>
<b>S 129(b)</b> <i>False pretence or false representation</i>	<ul style="list-style-type: none"> <li>• A person;</li> <li>• by any false pretence or false representation, or by threats or intimidation of any kind;</li> <li>• procures another person to have unlawful sexual intercourse;</li> <li>• either in this State or elsewhere</li> </ul>	<ul style="list-style-type: none"> <li>• Intention (s 13).</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>• Not specified</li> </ul>	

Section 129 was recently amended by the *Criminal Code Amendment (Child Exploitation) Act 2005* (Tas)<sup>75</sup> to omit subsection (c) from the above offence. This subsection related to procuring unlawful sexual intercourse through the use of drugs. Section 169 of the *Criminal Code* (Tas) now makes it a crime to administer or cause another person to take any drug, alcohol or other thing, with intent to stupefy or overpower that person in order to facilitate the commission of an offence. It was therefore reasoned that s 129(c) was no longer necessary as the conduct this section covered is now criminalised by s 169.<sup>76</sup>

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<sup>73</sup> *Criminal Code Amendment (Sexual Offences) Act* (Tas), No 71 of 1987.

<sup>74</sup> *Criminal Code* (Tas) s 129.

<sup>75</sup> No. 29 of 2005.

<sup>76</sup> Tasmania, *Parliamentary Debates*, House of Assembly, 14 June 2005, 23 (Judy Jackson, Minister for Environment and Planning).