



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

Jennifer Norberry  
Law and Bills Digest Section

### **Contents**

Purpose . . . . .	2
Background . . . . .	2
The global problem of people trafficking . . . . .	2
People smuggling, people trafficking and the Bill . . . . .	2
The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children . . . . .	3
Treaty action . . . . .	4
Parliamentary Joint Committee on the Australian Crime Commission (PJC) . . . . .	5
National action on trafficking in persons . . . . .	5
Consultation draft of the Bill . . . . .	5
Main Provisions . . . . .	6
Trafficking in persons and debt bondage . . . . .	6
Trafficking persons into Australia . . . . .	6
Offence of trafficking persons into Australia . . . . .	6
Aggravated offence of trafficking of persons into Australia . . . . .	7
Offence of trafficking children into Australia . . . . .	7

Jurisdictional requirements for offences of people trafficking into Australia and debt bondage . . . . .	7
Domestic trafficking . . . . .	8
Offence of domestic trafficking of persons . . . . .	8
Offence of aggravated domestic trafficking in persons. . . . .	8
Domestic trafficking of children. . . . .	8
Jurisdictional requirements for the domestic trafficking offences . . . . .	8
Debt bondage . . . . .	9
People trafficking offences, other laws and double jeopardy. . . . .	9
Amendments of existing provisions in the Criminal Code . . . . .	9
Definitions . . . . .	9
Penalties. . . . .	10
Deceptive recruiting for sexual services . . . . .	10
Amendments related to the passage of <i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i> . . . . .	10
Amendment of the <i>Telecommunications (Interception) Act 1979</i> . . . . .	11
Concluding Comments. . . . .	11
Absolute liability. . . . .	11
The victims of people trafficking . . . . .	12
Endnotes. . . . .	13

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

**Date Introduced:** 8 December 2004

**House:** Senate

**Portfolio:** Justice and Customs

**Commencement:** The formal provisions commence on Royal Assent; the substantive provisions commence 28 days after Royal Assent

### **Purpose**

To insert people trafficking and debt bondage offences into the Criminal Code and amend the existing deceptive recruiting for sexual services offence.

### **Background**

#### **The global problem of people trafficking**

It is difficult to estimate the size of the global people trafficking problem. In a recent submission to the Parliamentary Joint Committee on the Australian Crime Commission (PJC), the Attorney-General's Department stated, 'Experts estimate that anywhere from 700,000 to four million persons are trafficked annually worldwide'.<sup>1</sup> Similarly, there is no agreement on the size of the problem in Australia. While much of the discussion about people trafficking focuses on the trafficking of women for the purposes of sexual servitude:

Trafficking takes place for a variety of end purposes including domestic service, forced marriage and sweatshop labour. Forced sex work is the most visible end-result of trafficking especially in developed countries such as Australia but there is no evidence that it is the most common.<sup>2</sup>

#### **People smuggling, people trafficking and the Bill**

The Bill inserts new people trafficking offences into the Criminal Code. Confusion sometimes exists about the difference between people smuggling and people trafficking. The United Nations Office on Drugs and Crime explains the difference in this way:

In some respects, trafficking in persons resembles the smuggling of migrants ... but there are several important differences.

***Warning:***

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.

Another major difference is that smuggling ends with the arrival of migrants at their destination, whereas trafficking involves the ongoing exploitation of the victims in order to generate illicit profits for the traffickers. From a practical standpoint, victims of trafficking also tend to be more severely affected and in greater need of protection from re-victimization and other forms of further abuse than are smuggled migrants.

Finally, smuggling is always transnational, whereas trafficking need not be. Trafficking can occur regardless of whether victims are taken to another country or only moved from one place to another within the same country.<sup>3</sup>

There are already a number of people smuggling offences in the *Migration Act 1958* and in the Criminal Code. The Migration Act includes offences of bringing an unlawful non-citizen or a group of such persons into Australia. Further offences were added to the Criminal Code with the passage of the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002*. These offences apply to what might be called international smuggling ie to the smuggling of people into a foreign country (whether or not via Australia). The new people smuggling offences are, in general, based on the Protocol Against the Smuggling of Migrants by Land, Sea and Air (the Smuggling Protocol).

Additionally, there are some people trafficking offences in the Criminal Code. These offences—slavery, sexual servitude and deceptive recruiting—were added to the Criminal Code in 1999.<sup>4</sup>

The Bill inserts **new Division 271** into the Criminal Code, creating new trafficking and debt bondage offences. These new offences are based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (the Trafficking Protocol).

## **The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**

The purpose of the Trafficking Protocol is to prevent and combat trafficking in persons and facilitate international cooperation against such trafficking. It aims to maintain a balance between law enforcement and victim protection. The Trafficking Protocol came into force on 25 December 2003. At present, the Protocol has 117 signatories and 76 parties. The Trafficking Protocol contains the first internationally agreed definition of ‘trafficking’ as:

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>5</sup>

It defines ‘exploitation’ as, at a minimum:

the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>6</sup>

Amongst other things, Parties to the Trafficking Protocol undertake to:

- criminalise trafficking in persons (articles 3 and 5)
- take measures to protect and assist the victims of trafficking. This includes considering the implementation of measures to help rehabilitate victims through the provision of housing, counselling and training, and endeavouring to provide physical protection for victims (article 6)
- consider taking legislative or other measures to permit victims to remain in their ‘territory, temporarily or permanently, in appropriate cases’ (article 7), and
- establish comprehensive policies, programs and other measures to prevent trafficking and protect its victims (especially victims who are women or children) (article 9).

## Treaty action

Australia signed the Protocol on 11 December 2002 and made the following declaration:

The Government of Australia hereby declares that nothing in the Protocol shall be seen to be imposing obligations on Australia to admit or retain within its borders person in respect of whom Australia would not otherwise have an obligation to admit or retain within its borders.

Australia has not yet ratified the Trafficking Protocol. The general rule adopted in this country is that before action is taken that will bind Australia, the texts of treaties are tabled in Parliament, together with a National Interest Analysis (NIA). The purpose of an NIA is to address matters such as why Australia should become a party to the treaty, what advantages and disadvantages may flow, what compliance costs will arise and what are the views of the States and Territories on the proposed treaty action. The treaty and the NIA are also referred to the Joint Committee on Treaties for inquiry and report.<sup>7</sup>

The Protocol, together with the UN Convention on Transnational Organized Crime and the Smuggling Protocol, was tabled in Parliament on 3 December 2003. Accompanying each was an NIA.<sup>8</sup> With respect to the Trafficking Protocol, the NIA commented that a number

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

of the Protocol's obligations could be implemented administratively or under existing Commonwealth legislation and that, additionally:

- amendments would be made to the Criminal Code to introduce new offences of trafficking in persons in order to give effect to the obligations in articles 3 and 5 of the Protocol, and
- amendments would be made to the Migration Regulations 1994 to provide new visa arrangements for trafficking victims in order to give effect to article 7 of the Protocol.

In March 2004, the Joint Committee on Treaties supported all three treaties and recommended that binding treaty action be taken in each case.<sup>9</sup>

### **Parliamentary Joint Committee on the Australian Crime Commission (PJC)**

In June 2003, the issue of trafficking in women for sexual servitude purposes was referred to the PJC. The PJC reported in June of the following year and recommended that the Government ratify the Trafficking Protocol as soon as possible. Among other things, it also recommended:

- a review of the adequacy of existing provisions in the Criminal Code dealing with the recruitment, transportation and transfer of women for the purposes of trafficking
- an amendment to section 270.7 of the Criminal Code (dealing with deceptive recruiting for sexual services) 'to broaden the offence to include deception regarding not only the type of work to be done, but expressly the kind of services to be provided, whether of a sexual nature or not'<sup>10</sup>
- that 'all trafficked women accepted onto the victim support program or receiving the Criminal Justice Stay Visa be exempt from compulsory return to their country of origin'.<sup>11</sup>

### **National action on trafficking in persons**

During the PJC's inquiry, the Commonwealth Government announced some major initiatives designed to address the problem of people trafficking. It is beyond the scope of this Bills Digest to detail those measures. However, they include an agreement by the Australasian Police Ministers' Council to a National Action Plan. Another initiative was the release of a Commonwealth *Action Plan to Eradicate Trafficking in Persons*. This plan focuses on prevention, detection and investigation, criminal prosecution, and victim support and rehabilitation.<sup>12</sup>

### **Consultation draft of the Bill**

A consultation draft of the Bill was released in September 2004 for public comment. There are some differences between the consultation draft and the Bill. These differences relate

***Warning:***

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

mainly to the offence of debt bondage. The consultation draft contained three different proposals for a debt bondage offence:

- a broad debt bondage offence criminalising conduct that causes another person to enter into debt bondage and which is done with the intention of inducing that person to enter into debt bondage. A potential difficulty with a broad offence like this was said to be inadvertent criminalising of activities like debt arrangements among family members which do not involve exploitation.
- limiting the debt bondage offence to the provision of sexual services, or
- prohibiting all debt arrangements applying to sex workers.

The Bill adopts the first approach with a broad debt bondage offence. It also provides that in determining whether an offence has occurred a jury can look at evidence about matters such as the economic relationship between the parties, the terms of any agreement between them and the personal circumstances of the ‘victim’ (including the ‘victim’s’ social and physical dependence on the alleged offender).

## Main Provisions

### Trafficking in persons and debt bondage

**Item 9 of Schedule 1** adds **new Division 271** (Trafficking in persons and debt bondage) to the Criminal Code.

**New section 271.1** inserts a number of definitions into the new Division. These include a definition of ‘deceive’ (meaning to mislead about facts, intentions or the law), a definition of ‘confiscate’ (meaning destroying or taking possession of a person’s travel or identity documents permanently or otherwise) and a definition of ‘threat’ (which includes a threat of detrimental action).

Other definitions, which will apply to **new Division 271** as well as more generally, are found in **items 10-16 of Schedule 1**. These definitions will be inserted into the Criminal Code dictionary.

### Trafficking persons into Australia

#### Offence of trafficking persons into Australia

**New subsection 271.2(1)** creates an offence of trafficking persons into Australia where the entry into Australia is accomplished by the use of threats or force which causes the victim to consent to the entry. Absolute liability applies to one element of the offence—that the use of threats or force results in the victim consenting to being brought to

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Australia. In other words, 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. Nor will the defendant 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>13</sup>

**New subsection 271.2(2)** creates an offence where a person's entry into Australia occurs as the result of deception about the fact that their stay will involve the provision of sexual services, exploitation, debt bondage or the confiscation of their travel or identity documents.

The maximum penalty for either offence is 12 years imprisonment.

### Aggravated offence of trafficking of persons into Australia

An aggravated offence, with a maximum penalty of 20 years imprisonment is created if a person commits a **new section 271.2** offence where:

- the offender intends that the victim will be exploited after entering Australia
- the offender subjects the victim to cruel, inhuman or degrading treatment, or
- the offender recklessly subjects the victim to a danger of death or serious harm (**new section 271.3**).

### Offence of trafficking children into Australia

**New section 271.4** creates an offence of trafficking 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 20 years imprisonment (**new section 271.7**).

### Jurisdictional requirements for offences of people trafficking into Australia and debt bondage

Extended geographical jurisdiction (category B) applies to the above offences (**new section 271.10**). This means that the offences apply to conduct by Australian citizens or bodies corporate anywhere in the world, subject to a foreign law defence.<sup>14</sup> Extended

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



geographical jurisdiction (category B) is also applied to existing sexual servitude and deceptive recruiting offences by the Bill.

## Domestic trafficking

### Offence of domestic trafficking of persons

**New section 271.5** creates an offence of trafficking in persons within Australia by the use of force or threats. The maximum penalty for this offence is imprisonment for 12 years. The use of threats or force must result in the victim consenting to being transported to Australia. This element of the offence attracts absolute liability.

It will also be an offence to traffic persons within Australia having deceived them about the fact that the arrangement will involve the provision of sexual services, exploitation, debt bondage or the confiscation of travel or identity documents. Once again, the maximum penalty is imprisonment for 12 years.

### Offence of aggravated domestic trafficking in persons

A person who commits an offence of domestic trafficking in persons will commit an aggravated offence 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 maximum penalty is imprisonment for 20 years (**new section 271.6**).

### Domestic trafficking of children

It will be an offence to traffic in a person under the age of 18 years intending or reckless as to whether that person will be used to provide sexual services or be otherwise exploited. The maximum penalty is imprisonment for 20 years.

### Jurisdictional requirements for the domestic trafficking offences

The Trafficking Protocol applies to transnational activity. However, as described above, the Bill also creates domestic trafficking offences. For constitutional reasons, these offences must be tied to specific heads of Commonwealth power. The Bill 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 (**new section 271.11**).<sup>15</sup>

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Debt bondage

‘Debt bondage’ is defined in **item 10 of Schedule 1** 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.

An offence of debt bondage is created by **new section 271.8** if a person intentionally causes another person to enter into debt bondage. The maximum penalty is imprisonment for 12 months. 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).

An offence of aggravated debt bondage is created by **new section 271.9**. It will occur if the offender commits an offence of debt bondage and the victim is under 18 years of age. The maximum penalty is imprisonment for 2 years. 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.

## People trafficking offences, other laws and double jeopardy

**New section 271.12** is designed to preserve the operation of other relevant Commonwealth, State and Territory laws. Such laws might include existing federal, State and Territory sexual servitude offences.<sup>16</sup>

**New section 271.13** provides that a person who is convicted or acquitted outside Australia for conduct involving people trafficking cannot be convicted of a Commonwealth people trafficking offence (ie an offence against **new Division 271** of the Criminal Code). This is a protection against double jeopardy.

## Amendments of existing provisions in the Criminal Code

The Bill makes a number of amendments to existing provisions and offences in the Criminal Code.

## Definitions

**Items 1-3 of Schedule 1** move a number of definitions from people smuggling and sexual servitude offences in the Criminal Code to the Criminal Code dictionary. These are definitions of terms, like ‘exploit’, which will also occur in the new people trafficking

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

offences, so it is appropriate to locate them in the Criminal Code dictionary. In some cases, the definitions are reworded.

## Penalties

**Items 5 and 6** replace the current maximum penalties (19 years imprisonment) for sexual servitude offences with maximum penalties of 20 years imprisonment. This will bring the penalties for sexual servitude offences into line with penalties for the new people trafficking offences.

## Deceptive recruiting for sexual services

**Item 7** replaces the existing offence of deceptive recruiting for sexual services in subsection 270.7(1) of the Criminal Code with a reworded offence. The new offence will cover a wider range of circumstances in which deceptive recruiting can occur. For instance, not only will deceptive recruiting occur when the victim is deceived about the fact that they will be required to provide sexual services but the offence will also occur if the person is deceived about other matters, such as the extent to which they will be free to leave the place where they provide sexual services, the extent to which they will be free to cease providing sexual services or the extent to which they will be able to leave their place of residence.

The new offence may address criticisms that were made of the existing offence on the grounds that it is 'limited to deception about the nature of the work and does not capture the situation where women agree to work in the sex industry but are deliberately deceived about the conditions of work.'<sup>17</sup> There may be a question, however, about whether the new offence goes far enough. For instance, does it address the recommendation of the PJC that deception includes 'the kind of services provided, whether of a sexual nature or not'?<sup>18</sup>

As a result of the amendments, admissible evidence in a deceptive recruiting prosecution may 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).

## Amendments related to the passage of *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*

The *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (the 2000 Act) inserted general provisions about geographic jurisdiction into the Criminal Code. The Act also inserted a general provision requiring the Attorney-General's permission to be obtained for any prosecution where an offence has occurred outside Australia and the alleged offender is neither an Australian citizen nor an Australian resident.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

The existing sexual servitude and deceptive recruiting offences in the Criminal Code were enacted before the 2000 Act was passed and contain specific provisions relating to geographical jurisdiction and the Attorney-General's consent to prosecution. With the passage of the 2000 Act, they became redundant and are repealed by **items 4 and 8**.<sup>19</sup>

### **Amendment of the *Telecommunications (Interception) Act 1979***

**Item 1 of Schedule 2** amends the Telecommunications (Interception) Act so that telecommunications interception warrants will be available for the investigation of the new people trafficking offences and for all the people smuggling offences in Division 73 of the Criminal Code. These warrants are currently available for the investigation of slavery, sexual servitude and deceptive recruiting offences in Division 270 of the Code and for the aggravated offence of people smuggling in section 73.2 of the Code.

## **Concluding Comments**

### **Absolute liability**

Two of the people trafficking and domestic people trafficking offences include an element which attracts absolute liability. This is the element that the use of threats or force from the perpetrator results in the victim consenting to the arrangement. Under the scheme set down by the Criminal Code, the prosecution would normally need to show that the perpetrator was reckless about this result. The Bill provides that absolute liability applies. The prosecution will therefore not need to show that the perpetrator put their mind to this result and the perpetrator will not have a defence of mistake of fact.<sup>20</sup>

As stated earlier, the Explanatory Memorandum explains that without the use of absolute liability many perpetrators will be able to evade conviction.

The *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* issued with the authority of the Minister for Justice and Customs in February 2004 states:

Application of strict or absolute liability to a *particular* physical element of an offence has generally only been considered appropriate where *one* of the following considerations is applicable:

There is demonstrated evidence that the requirement to prove fault of that particular element is undermining or will undermine the deterrent effect of the offence, and there are legitimate grounds for penalising persons lacking 'fault' in respect of that element. In the case of absolute liability, there should also be legitimate grounds for penalising a person who made an honest and reasonable mistake of fact in respect of that element.<sup>21</sup>

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Parliament may wish to consider whether absolute liability is appropriate in relation to the two offences. In this regard, it may be relevant that the Trafficking Protocol appears to envisage the criminalisation of ‘intentional’ activity.<sup>22</sup>

## **The victims of people trafficking**

The Trafficking Protocol obliges States Parties to criminalise certain activities. It also obliges them to consider taking legislative or other measures to permit victims of people trafficking to remain in their ‘territory, temporarily or permanently, in appropriate cases’ and to take measures to protect and assist the victims of trafficking.

For some time, concerns have been expressed about the treatment of the victims of people trafficking, especially women trafficked for the purpose of sexual servitude. These concerns have focused on the deportation of potential witnesses and victims of people trafficking from Australia because such action ‘can be seen to undermine the goals of protection and prosecution, putting victims at risk with sometimes life threatening consequences, while allowing traffickers to act with impunity in Australia and abroad.’<sup>23</sup>

Treatment of the victims of people trafficking was the subject of debate in 2001 when Puangthong Simaplee, a brothel worker who told officials she had been trafficked into Australia on a false Malaysian passport, died in Villawood Detention Centre.<sup>24</sup> And in part the PJC’s recent inquiry into the trafficking of women for sexual servitude resulted from ‘the emergence in the media of allegations of mishandling of cases of trafficked women by government agencies.’<sup>25</sup>

As stated earlier, the NIA accompanying the Trafficking Protocol indicated that amendments would be made to the Migration Regulations 1994 to provide new visa arrangements for trafficking victims in order to give effect to article 7 of the Protocol. These regulations came into effect on 1 January 2004 and created new kinds of visas for unlawful non-citizens:

- Bridging Visas to allow a trafficking victim to be released from immigration detention if they might be able to assist investigations into people trafficking-related, sexual servitude or deceptive recruiting offences and to allow them to ‘stay lawfully in Australia while investigations are undertaken and a decision is made whether to grant them a Criminal Justice Stay Visa’<sup>26</sup>
- Witness Protection (Trafficking) (Temporary) (Class UM) and Witness Protection (Trafficking) (Permanent) (Class DH) Visas. ‘These new visas provide a two-stage process which initially grants a two year temporary visa followed by permanent stay in Australia for persons who have made a significant contribution to, and cooperated with, an investigation or prosecution of persons alleged to have trafficked or exploited them or others, and who need to remain in Australia for their own protection.’<sup>27</sup>

### ***Warning:***

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

More information about the prosecution of people traffickers and victim assistance initiatives is provided in the Government's *Action Plan to Eradicate Trafficking in Persons* which was issued in 2004:

To allow for more effective prosecutions, the Government has amended Australia's migration regulations to create a new class of bridging visa. The Bridging Visa F, which came into effect on 1 January 2004, allows people who could assist Australian authorities investigating people trafficking to remain in Australia for up to 30 days. This facilitates the investigation of possible trafficking offences.

During the 30-day period individuals will be assessed by the police to determine their eligibility for a Criminal Justice Stay Certificate. If a person is assessed as being able and willing to assist Australian authorities in pursuing the prosecution of a trafficking offence, a Criminal Justice Stay Visa may be granted to cover the period for which their assistance is required.

The Action Plan goes on to say:

... suspected victims who are granted a Bridging Visa can receive intensive support for the period of the Visa's validity or until they wish to leave Australia, whichever occurs first. ..

Additionally, victims who, as a result of their contribution to an investigation or the prosecution of people-trafficking offenders, are deemed at risk of harm if they return to their home country may be eligible for a temporary or permanent Witness Protection (Trafficking) Visa.

Despite the existence of Criminal Justice Stay Visas and the creation of the new Bridging and Witness Protection Visas, there has been some recent criticism of the treatment of the victims of trafficking. On 24 January 2005, *The Australian* reported that a woman described as a Thai sex slave who had co-operated with police by naming traffickers was placed in Sydney's Villawood Detention Centre and will be deported despite fears about her fate if she returns to Thailand. It was reported that she would be deported because the information she provided had not led to a prosecution.<sup>28</sup>

Ensuring adequate protection of the victims of people trafficking may be a matter that Parliament wishes to monitor.

## Endnotes

- 
- 1 Attorney-General's Department, Submission to the Joint Parliamentary Committee on the Australian Crime Commission, Inquiry into the Trafficking of Women for Sexual Servitude (Submission No. 36, p. 5).

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- 2 Anne Gallagher, Submission to the Joint Parliamentary Committee on the Australian Crime Commission, *Inquiry into the Trafficking of Women for Sexual Servitude* (Submission No. 23, p. 4).
- 3 [http://www.unodc.org/unodc/en/trafficking\\_victim\\_consent.html#how](http://www.unodc.org/unodc/en/trafficking_victim_consent.html#how)
- 4 *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999*.
- 5 Article 3, Trafficking Protocol.
- 6 *ibid.*
- 7 See *Australia and International Treaty Making Information Kit* at: <http://www.austlii.edu.au/au/other/dfat/reports/infokit.html>
- 8 <http://www.austlii.edu.au/au/other/dfat/nia/2003/34.html>
- 9 Joint Committee on Treaties, *Report 59, Treaties Tabled in December 2003*, March 2004.
- 10 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the Trafficking of Women for Sexual Servitude*, June 2004, p. 52. At [http://www.aph.gov.au/Senate/committee/acc\\_ctte/completed\\_inquiries/2002-04/sexual\\_servitude/report/index.htm](http://www.aph.gov.au/Senate/committee/acc_ctte/completed_inquiries/2002-04/sexual_servitude/report/index.htm)
- 11 *ibid.*, p. 57.
- 12 *Australian Government's Action Plan to Eradicate Trafficking in Persons*. At [http://www.ag.gov.au/agd/WWW/rwpattach.nsf/personal/7ABBC73F994862F6CA256EB500182B3F/\\$FILE/99+Traffickingplan.pdf](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/personal/7ABBC73F994862F6CA256EB500182B3F/$FILE/99+Traffickingplan.pdf)  
And for further details, see: <http://www.ag.gov.au/agd/www/Agdhome.nsf/Page/RWPA835B403668897F6CA256EB000F7264?OpenDocument>
- 13 Explanatory Memorandum, p. 7.
- 14 This means that it is a defence if there is no corresponding crime in the foreign jurisdiction.
- 15 The reach of the constitutional concept of 'alien' is unclear. For instance, recent High Court decisions have indicated that British settlers who came to Australia after 1949 and who have not taken out Australian citizenship are 'aliens'. See *Shaw v. Minister for Immigration and Multicultural and Ethnic Affairs* (2003) 203 ALR 143 and Peter Prince, *Departing British settlers*, Research Note No. 33, 10 February 2004.
- 16 The Explanatory Memorandum points out that all jurisdictions except Queensland and Tasmania have enacted sexual servitude offence laws.
- 17 See Kerry Carrington & Jane Hearn, *Trafficking and the Sex Industry: from Impunity to Protection*, Current Issues Brief No. 28, 2002–03, Department of the Parliamentary Library, p. 9.
- 18 PJC, *op. cit.*, p. 52.
- 19 Extended geographical jurisdiction (category B), which will now apply to sexual servitude and deceptive recruiting offences generally corresponds to the existing jurisdictional requirements.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- 20 A mistake of fact defence would apply to the element if it attracted strict liability rather than absolute liability.
- 21 *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, Issued by authority of the Minister for Justice and Customs, February 2004.
- 22 Article 5.1, Trafficking Protocol.
- 23 Carrington & Hearn, op. cit., p. 16.
- 24 *ibid*, p. 13.
- 25 PJC, op. cit, p. 1.
- 26 Migration Amendment Regulations 2003 (No. 10) 2003. See Explanatory Statement for these regulations.
- 27 Explanatory Statement, Migration Amendment Regulations 2003 (No. 11) 2003.
- 28 ‘Sex slave informant to be deported, case dropped’, *The Australian*, 24 January 2005.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



© Copyright Commonwealth of Australia 2005

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by senators and members of the Australian Parliament in the course of their official duties.

This brief has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Information and Research Service, nor do they constitute professional legal opinion.

---

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2476.

***Warning:***

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*