

# CHAPTER 1

## INTRODUCTION

### Background

1.1 On 9 February 2005, the Senate referred the provisions of the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 [2005] to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 7 March 2005. On 7 March 2005, the Senate agreed to extend the reporting date for this inquiry to 10 March 2005.

### Overview of the Bill

1.2 The Bill is part of the Government's response to issues arising out of trafficking in persons, and aims to fulfil Australia's legislative obligations under the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Protocol). The Protocol supplements the *United Nations Convention against Transnational Organised Crime*. The Protocol's purpose 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 Explanatory Memorandum explains that passage of the Bill, combined with other measures already in place, will permit Australian ratification of the Protocol.<sup>1</sup>

1.3 As explained below, the Bill inserts new Division 271 into the *Criminal Code Act 1995*, creating new trafficking and debt bondage offences.<sup>2</sup>

### *Trafficking persons into Australia*

#### (i) *Offence of trafficking persons into or within Australia*

1.4 Proposed 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 Australia.<sup>3</sup>

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1 *Explanatory Memorandum*, p. 1.

2 The overview of the Bill is drawn from the Bills Digest prepared by the Parliamentary Library in respect of the Bill. See *Bills Digest* No. 96, 2004-05.

3 This aspect of the offence is discussed in detail at paragraphs 2.74 to 2.76 of this report.

1.5 Proposed 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.

1.6 Proposed section 271.5 creates a similar offence of trafficking concerning the organisation or facilitation of the transportation of persons from one place in Australia to another place in Australia.

*(ii) Aggravated offence of trafficking of persons into Australia*

1.7 Proposed subsection 271.3 creates an aggravated offence, with a maximum penalty of 20 years imprisonment if a person commits the proposed section 271.2 offence and:

- 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.

*(iii) Offences of trafficking children into or within Australia*

1.8 Proposed 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.

1.9 Proposed section 271.7 creates a similar offence of trafficking concerning the organisation or facilitation of the transportation of children from one place in Australia to another place in Australia.

***Debt bondage***

1.10 Proposed section 271.8 creates an offence of debt bondage where a person intentionally causes another person to enter into debt bondage. The maximum penalty is imprisonment for 12 months.

1.11 'Debt bondage' is defined in the Bill 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.

1.12 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).

1.13 Proposed section 271.9 creates an offence of aggravated debt bondage. 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.

#### ***Deceptive recruiting for sexual services***

1.14 Item 7 of the Bill 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.

#### ***Jurisdictional requirements***

1.15 Proposed section 271.10 provides that extended geographical jurisdiction (category B) applies to the offences of people trafficking into Australia and debt bondage. This means that the offences apply to conduct by Australian citizens or bodies corporate anywhere in the world, subject to a foreign law defence.

1.16 The extended geographical jurisdiction is also applied to existing sexual servitude and deceptive recruiting offences by the Bill.

#### ***Jurisdictional requirements for the domestic trafficking offences***

1.17 For constitutional reasons, these offences must be tied to specific heads of Commonwealth power. Proposed section 271.11 therefore 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.

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

1.18 The Bill also amends the *Telecommunications (Interception) Act 1979* 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.

## **Conduct of the inquiry**

1.19 As mentioned above, the Bill was referred to the Committee on 9 February 2005. Details of the inquiry, the Bill and associated documents were immediately placed on the Committee's website. The Committee wrote to over 100 organisations and individuals to invite submissions by 17 February 2005. The Committee also advertised the inquiry in The Australian newspaper on 16 February 2005.

1.20 The Committee received 18 submissions, and these are listed at Appendix 1. Submissions were placed on the Committee's website for ease of access by the public.

1.21 The Committee held a public hearing in Sydney on 23 February 2005. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

## **Acknowledgement**

1.22 The Committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

## **Note on references**

1.23 References in this report are to individual submissions as received by the Committee, not to a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.