



Australian Government
Attorney-General's Department

Targeted Review of Divisions 270 and 271 of the *Criminal Code Act 1995 (Cth)*



DISCUSSION PAPER

Acknowledgement of Country

We acknowledge the traditional custodians of Australia and their continuing connection to land, sea and community. We pay our respects to the people, the cultures and their Elders, past and present, and thank them for their ongoing contributions to the culture and prosperity of our great Australian nation.



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Use of the Coat of Arms

The terms under which the Coat of Arms can be used are detailed on the It's an Honour website (www.itsanhonour.gov.au).

Help and Support

Help is available for any person experiencing, or at risk of, modern slavery.

If you have immediate concerns for your safety, the safety of another person, or there is an emergency, dial Triple Zero (000).

You can also contact the Australian Federal Police (AFP) on 131 237 (131AFP) or go to the AFP website at www.afp.gov.au for help. The AFP can keep you safe, provide advice and refer you to other services that provide accommodation, financial support, counselling, and legal and immigration advice.

Anti-Slavery Australia provides free, confidential legal and migration services to people who have experienced or are at risk of modern slavery in Australia. If you have experienced modern slavery, or you are worried about someone in this situation, contact Anti-Slavery Australia for free and confidential legal advice and support. Call (02) 9514 8115 (9am–5pm AEST, Monday to Friday), or email ASALegal@uts.edu.au.

If you are in, or at risk of, forced marriage, you can contact My Blue Sky, Australia's national forced marriage service. Call (02) 9514 8115, text +61 481 070 844 (9am–5pm Monday to Friday), email help@mybluesky.org.au or visit www.mybluesky.org.au for support and free, confidential legal advice.

Free interpreter services are available to help any person communicate with service providers in their own language. Call Translating and Interpreting Service on 131 450. All calls are free and confidential.

Modern slavery is a challenging issue and this Discussion Paper includes high-level case studies that may bring up strong feelings for some people. Please take care as you read this Discussion Paper.

Table of Contents

Help and Support	3
Consultation Process	5
Introduction	7
Consolidated discussion questions	8
Modern Slavery in Australia	9
Key concepts and definitions.....	26
Division 270 – Slavery and slavery-like practices	31
Division 271 – Trafficking in Persons	42
Penalties and extension of criminal liability	54
Challenges with victim and survivor testimony	56
APPENDIX A – Terms of Reference	59
APPENDIX B – Convictions	61
APPENDIX C – Summary of offences and penalties	62

Consultation Process

This Discussion Paper invites comments on issues raised from interested parties and stakeholders. Feedback received will contribute to the development of findings for the targeted review of modern slavery offences in Divisions 270 and 271 of the Commonwealth *Criminal Code Act 1995* (the Criminal Code).

This targeted review is interested in hearing from all members of the community, particularly those with experience of Divisions 270 and 271 including victims and survivors, criminal justice practitioners, civil society organisations, community groups, unions and academia.

Lodging feedback

Feedback can be provided via an online survey or in a written submission responding to questions raised in this Discussion Paper.

Online survey

Respondents can complete the online survey on the Attorney-General's Department website using the following link: <https://consultations.ag.gov.au/crime/modern-slavery-offences>

You do not have to address all survey questions. Survey responses can be submitted under your name or anonymously. There will also be a consent question to confirm whether you agree to your survey responses being made public. Responses will not be made public until after the consultation period for the targeted review has closed.

Written submission

Feedback may also be provided in a written submission responding to questions raised in this Discussion Paper and/or raising different or additional matters. Written submissions may be submitted through the Attorney-General's Department website using the following link: <https://consultations.ag.gov.au/crime/modern-slavery-offences>. Submissions may also be sent via email to targetedslaveryreviews@ag.gov.au.

If you submit online, there will be a consent question to confirm whether you agree to your submission being made public. If you submit via email to targetedslaveryreviews@ag.gov.au, please indicate whether you consent to have your submission made public.

The intention is to publish submissions at the conclusion of the consultation period on the Attorney-General's Department website. Please indicate if you would like all or part of your submission to remain in confidence. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment. Please refrain from including personal information about other individuals in the body of your submission. Legal requirements, such as those imposed by the *Freedom of Information Act 1982* (Cth), may affect the confidentiality of your submission.

Note that this targeted review collects your personal information (unless you submit anonymously) in order to contact you if the review wants to clarify matters discussed in your submission, needs to clarify the nature of your submission (eg, if it is made in a personal or representative capacity), to confirm your consent to the publication of information in your submission, or to seek feedback on the consultation process.

Additional consultation channels

If you would like to discuss your feedback in person or via a video or phone call, please contact targetedslaveryreviews@ag.gov.au.

During the consultation period, the Attorney-General's Department may conduct targeted in-person and online consultation sessions on particular aspects of the targeted review as required.

Consultation period

The consultation opens on 7 December 2022 and closes on 7 March 2023.

Reviewer

The targeted review is being led by the Attorney-General's Department in collaboration with the AFP and the Commonwealth Director of Public Prosecutions (CDPP).

Enquiries

Please direct enquiries to targetedslaveryreviews@ag.gov.au.

Introduction

Note on terminology

This Discussion Paper uses the terms trafficking in persons, slavery and slavery-like practices for consistency with terminology in Australia's offences at Divisions 270 and 271 of the Criminal Code. The term 'modern slavery' is also used in this Discussion Paper. Modern slavery is an umbrella term and describes all trafficking in persons, slavery and slavery-like practices criminalised in Divisions 270 and 271 of the Criminal Code.

This Discussion Paper uses the terms 'victim' and 'survivor' to describe an individual who has experienced trafficking in persons, slavery and slavery-like practices. We acknowledge that individuals who have experienced these crimes may not identify with these terms.

Note on case studies in this Discussion Paper

This Discussion Paper includes case studies that are based on publicly reported cases that have occurred in Australia, as well as hypothetical case studies. Case studies based on real cases have had some facts changed or omitted out of consideration for the victims and survivors of those cases.

About the targeted review

The Australian Government is undertaking a targeted review of offences for trafficking in persons, slavery and slavery-like practices in Divisions 270 and 271 of the Criminal Code. This initiative recognises that strong criminal justice responses are an important part of addressing trafficking in persons, slavery and slavery-like practices by ensuring Australia's justice frameworks continue to support effective disruption, investigation and prosecution outcomes.

Terms of reference for the targeted review are available online at [Terms of Reference – Targeted review of Divisions 270 and 271 of the Criminal Code | Attorney-General's Department \(ag.gov.au\)](#). They are also included in the Discussion Paper at Appendix A.

Consolidated discussion questions

Section 1 - Modern slavery in Australia

Question 1: Are stakeholders observing interactions between offences in Divisions 270 and 271 and other laws and frameworks that are impeding, or have the potential to impede, effective investigations and prosecutions of offences in Divisions 270 and 271?

Section 2 - Global trends and practices

Question 2: To what extent have stakeholders encountered cases where technology (including devices and platforms) has been used by perpetrators to facilitate, recruit, advertise or exploit victims and survivors into trafficking in persons, slavery or slavery-like practices?

Question 3: Are there gaps in offences in Divisions 270 and 271 that would prevent their application to cases where technology is used to facilitate, recruit, advertise or exploit victims and survivors into trafficking in persons, slavery or slavery-like practices? If so, what are the observed gaps and how might they be addressed?

Question 4: Are Divisions 270 and 271 appropriately future-proof and flexible enough to apply to the misuse of new and emerging forms of technology and online conduct? If not, why not, and are specific changes to Divisions 270 and 271 recommended?

Section 3 – Key concepts and definitions

Question 5: What kind of conduct may constitute deception through omission as relevant to offences in Divisions 270 and 271 of the Criminal Code?

Question 6: Should reforms be considered to broaden the application of Divisions 270 and 271 to explicitly include conduct that includes deception by omission?

Question 7: What unintended consequence might arise that would require consideration in drafting any reforms to the definition of deceive?

Question 8: Do the definitions of coercion, threat and deception collectively capture the types of conduct used in offending in Divisions 270 and 271, including subtle forms of coercion? If not, why not, and are specific solutions recommended?

Question 9: Are stakeholders observing serious forms of exploitative conduct that are not captured by Australia's definition of exploitation and are appropriate for consideration as part of Australia's response to modern slavery (ie involving very serious forms of exploitation that are not captured by other laws and frameworks)? If so, what is being observed?

Question 10: If the definition of exploitation were expanded, how should this be done? For example, through stipulating additional forms of exploitation, adding to the definition with a 'catch-all' description of exploitation, or amending the definition so that it is a non-exhaustive definition?

Question 11: Is the principle of irrelevance of consent adequately enshrined in Divisions 270 and 271? If not, why not, and how could this be addressed?

Section 4 – Division 270 – Slavery and slavery-like practices

Question 12: Is additional guidance required to strengthen consistent understandings on the duration and continuity of a condition of slavery, servitude and forced labour? If so, what form might this guidance take?

Question 13: Would it be desirable to legislate and include additional guidance about factors that might indicate significant deprivation? If so, what form might this take? Are there other options that might be preferable or useful to help clarify the distinction between servitude and forced labour?

Question 14: Should subsection 270.10(1) be expanded to make explicit that factors at subsection 270.10(2) can apply to deliberation of whether a reasonable person in the position of a victim and survivor would have felt free to cease providing labour or services or to leave the place where they are providing those labour or services?

Question 15: Do the list of matters at subsection 270.10(2) provide appropriate guidance? If not, why not, and what additional or different factors should be considered?

Question 16: Do the definitions of servitude and forced labour adequately capture the circumstances that are relevant to establishing whether a person has offered themselves voluntarily to provide labour or services? If not, why not, and are specific alternatives recommended?

Question 17: Does the deceptive recruiting offence continue to be fit-for-purpose and provide an appropriate investigation and prosecution option where more serious labour exploitation offences cannot be made out?

Question 18: Does the forced marriage offence, as it is currently phrased, adequately capture conduct that leads to a forced marriage taking place, including coercion that occurs as a pattern of behaviour over time? If not, why not, and are specific solutions recommended?

Question 19: Should Australia's forced marriage offences in the Criminal Code contain stronger protections for children between the age of 16 and 18? If so, how could this be achieved?

Question 20: Does the definition of marriage in subsection 270.7A(2) adequately apply to the types of forced marriages that are being observed by Australian law enforcement agencies and other stakeholders? If not, why not, and what changes or solutions are recommended?

Question 21: Does the debt bondage offence continue to be fit-for-purpose and provide an appropriate investigation and prosecution option where more serious labour exploitation offences cannot be made out?

Question 22: Are the range of factors that give rise to an aggravated offence at section 270.8 appropriate and do they reflect the type of circumstances that should give rise to higher penalties against offences at Division 270?

Question 23: Are the alternative verdict provisions operating effectively in practice and supporting investigation and prosecution outcomes? Do stakeholders have recommendations to strengthen the availability and operation of alternative verdicts in Division 270?

Question 24: Is the list of factors that may be considered by a trier of fact in section 270.10 sufficient, or are there other circumstances that should be considered?

Section 5 – Division 271 – Trafficking in Persons

Question 25: Should the cross-border trafficking offences (including trafficking in children) be amended so that they do not require the physical movement of a person? If so, how could this be achieved through amendments to the offences?

Question 26: Does organising or facilitating entry or exit or proposed entry or exit or receipt of a person adequately capture the relevant actions that comprise the 'act' in trafficking in persons? If not, why not, and what alternate or additional terms are recommended?

Question 27: Should the domestic trafficking offences (including trafficking in children) be amended so that they do not require the physical movement of a person? If so, how could this be achieved through amendments to the offences?

Question 28: Should the domestic trafficking offences include the same terms as the cross-border offences so that the same methods are captured? For example, should the term 'receipt' form part of Australia's domestic trafficking offences? Similarly, should the domestic trafficking in children offence mirror the domestic trafficking in persons offence and include 'proposed transportation'?

Question 29: Do the definitions of coercion, threat and deception collectively capture the conduct used by traffickers to achieve the physical elements of a trafficking in persons offence?

Question 30: Are the factors that establish an aggravated offence in section 271.3 appropriate and do they reflect the type of aggravating circumstances that should give rise to higher penalties?

Question 31: Is the term 'sexual services' appropriate in the context of Australia's child trafficking offences? If not, are alternate terms suggested? If the term is not appropriate in the context of child trafficking, is it appropriate in the context of trafficking involving adult victims and survivors? What might the unintended consequences be if the term was changed, noting it is used throughout offences in Division 271?

Does the phrase 'provide sexual services or will otherwise be exploited' adequately capture the forms of exploitation that may be present in, or driving, child trafficking?

Question 32: Should the requirement that a person be trafficked across an Australian border be amended so that Australia's trafficking offences can cover conduct by Australian citizens, permanent residents and bodies corporate offshore? Would this adequately address gaps in the application of Australia's trafficking offences to orphanage trafficking?

Question 33: Does the definition of exploitation sufficiently cover the forms of exploitation that may be experienced by children that are trafficked into orphanages? If not, what forms of exploitation are taking place and how might these be incorporated into the offences for trafficking in persons or the definition of exploitation?

Question 34: Should Australia's organ trafficking offences be amended to remove the cross-border element to capture conduct by Australian citizens, permanent residents and bodies corporate offshore where they are trafficking persons for the purpose of organ removal between or within foreign jurisdictions? What might the consequences (including unintended) be?

Question 35: If Australia's organ trafficking offences were amended to remove the cross-border element (as contemplated in the previous discussion question), would this strengthen the Commonwealth's response to situations where an Australian citizen, permanent resident or Australian body corporate may exploit an individual outside of Australia for the purposes of organ removal and transplantation?

Question 36: Is Australia's harbouring offence fit for purpose? If not, why not and are specific changes recommended?

Question 37: Are the full range of separate trafficking offences helpful to law enforcement agencies? Do the number or range of offences cause challenges or complications with investigations and prosecutions?

Question 38: Is it desirable to explore amending the requirement that a person be trafficked across an Australian border so that Australia's trafficking offences can cover offshore conduct

perpetrated by Australian citizens, permanent residents and Australian bodies corporate? What might the consequences (including unintended) of this change be?

Question 39: Are the jurisdictional requirements of Australia's domestic trafficking in persons offences appropriate? If not, why not and what changes or solutions are recommended?

Question 40: Do the penalties contained in Divisions 270 and 271 appropriately reflect the seriousness of the offences? If not, why not?

Section 6 – Challenges with victim and survivor testimony

Question 41: Do stakeholders have recommendations about how Divisions 270 and 271 can take a victim and survivor-centred approach and reduce reliance on victim and survivor testimony while maintaining the core elements of the offences that align with international law and standards?

Question 42: Do the general defences in the Criminal Code (including duress) sufficiently capture the contexts in which a victim and survivor may commit an offence in connection to their experience of trafficking in persons, slavery or slavery-like practices? If not, why not, and what are the deficiencies? What form might additional protections for victims and survivors take?

Modern Slavery in Australia

Australia's Response

Australia has a comprehensive response to modern slavery that includes:

- criminal offences with penalties of up to 25 years' imprisonment
- specialist AFP investigative teams
- a dedicated support program for victims and survivors
- a dedicated visa framework that provides visa arrangements that enable suspected victims and survivors to remain lawfully in Australia to receive support and assist with a criminal justice process, and
- the *Modern Slavery Act 2018* (Cth), which provides a transparency framework to drive business action to address modern slavery in global operations and supply chains.

The Government is committed to strengthening modern slavery at home and abroad, including by strengthening the *Modern Slavery Act 2018* (Cth) and establishing an Anti-Slavery Commissioner.

National Action Plan to Combat Modern Slavery 2020-25

Australia's *National Action Plan to Combat Modern Slavery 2020-25* (the National Action Plan) provides the strategic framework that underpins Australia's response to modern slavery and includes 46 initiatives under five priorities to: (1) prevent; (2) disrupt, investigate and prosecute; (3) support and protect; (4) partner; and (5) research.

The targeted review delivers Action Item 19 of the National Action Plan and is focused specifically on the operation of criminal offences for trafficking in persons, slavery and slavery-like practices in Divisions 270 and 271 of the Criminal Code. The National Action Plan can be viewed online at www.ag.gov.au/system/files/2022-08/national-action-plan-combat-modern-slavery-2020-25.pdf.

Modern slavery practices in Australia

Modern slavery happens in Australia and can occur in any sector or segment of society. These crimes are often hidden in plain sight and can be difficult to detect or identify, even by those experiencing harm. Research by the Australian Institute of Criminology (the AIC) in partnership with the Walk Free Foundation estimates that for every victim and survivor identified by Australian authorities, four remain undetected.¹

In the 2021-22 financial year, the AFP received **294 reports** relating to allegations of modern slavery offences under Divisions 270 and 271 of the Criminal Code. Of these:

- 84 were for forced marriage
- 56 were for trafficking in persons (excluding child trafficking)
- 54 were for sexual exploitation
- 42 were for forced labour
- 21 were for child trafficking

¹ Samantha Lyneham, Christopher Dowling and Samantha Bricknell, '[Estimating the dark figure of human trafficking and slavery victimisation in Australia](#)' (2019) *Statistical Bulletin* 16, Australian Institute of Criminology, Canberra.

- 18 were for domestic servitude
- 8 were for slavery
- 6 were for debt bondage, and
- 5 were for deceptive recruiting

This represents an increase of over 30% from the previous financial year.

Since 2004, the Government has provided comprehensive, tailored support to victims and survivors through its dedicated Support for Trafficked People Program (the Support Program). The Support Program is administered by the Department of Social Services and aims to assist clients in meeting their safety, security, health and well-being needs and to develop options for life after leaving the Support Program. Support includes access to accommodation, medical treatment and counselling, referral to legal and migration advice, skills development and social support. Some trends since 2004 include:

- Increasing cases have been referred to the Support Program each year
- The majority of clients supported are women and girls
- There has been a continuing rise in victims and survivors of criminal forms of labour exploitation (including slavery, servitude and forced labour) and forced marriage, which were the most common form of referrals to the Support Program in 2020-21 and 2021-22
- Victims and survivors of sexual exploitation are declining as a proportion of total victims and survivors
- From 2009 to 30 June 2022, most clients on the Support Program have been Australian citizens. Non-Australian clients are primarily from South Asia, the Middle East and more recently, the Pacific Region.

International legal frameworks

Australia's response to trafficking in persons, slavery and slavery-like practices reflects our obligations as a State Party to a range of international instruments. In particular, the *International Convention to Suppress the Slave Trade and Slavery* (the Slavery Convention) and *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* set out Australia's international legal obligations to address slavery and slavery-like practices.

The *United Nations Convention against Transnational Organized Crime* (UNTOC) and its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Trafficking Protocol) set out Australia's international legal obligations to address trafficking in persons.

Australia's response to trafficking in persons, slavery and slavery-like practices is also shaped by our obligations under other international instruments. These include:

- *International Covenant on Civil and Political Rights*
- *International Covenant on Economic, Social and Cultural Rights*
- *Convention on the Elimination of All Forms of Discrimination against Women*

- *Convention on the Rights of the Child, and its Optional Protocols on: the sale of children, child prostitution and child pornography²; and on involvement of children in armed conflict*
- *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*
- *International Convention on the Elimination of All Forms of Racial Discrimination*
- *ILO Forced Labour Convention, 1930 (No. 29)*
- *ILO Protocol of 2014 to the Forced Labour Convention, 1930*
- *ILO Abolition of Forced Labour Convention, 1957 (No. 105)*
- *ILO Worst Forms of Child Labour Convention, 1957 (No. 105), and*
- *ILO Minimum Age Convention, 1973 (No. 138) (Australia is in the process of ratifying this Convention).*

Australia's criminal law framework

Australia's offences for trafficking in persons, slavery and slavery-like practices are set out in Divisions 270 and 271 of the Criminal Code.

Division 270 of the Criminal Code criminalises slavery and slavery-like practices including servitude, forced labour, deceptive recruiting, debt bondage and forced marriage. The slavery offences in Division 270 have universal jurisdiction and apply to conduct within or outside of Australia, and whether or not the offender is an Australian citizen, resident or body corporate. The slavery-like offences in Division 270 have extended geographical jurisdiction and can apply where the conduct occurred in Australia, or where the conduct occurred outside Australia but the offender was an Australian citizen, resident or body corporate.

Division 271 contains specific offences for trafficking in persons, including cross-border and domestic trafficking, trafficking in children, organ trafficking, and harbouring a victim. With the exception of the domestic offences, the trafficking in persons offences have extended geographical jurisdiction and can apply where the conduct occurred in Australia, or where the conduct occurred outside Australia but the offender was an Australian citizen, resident or body corporate.

Previous reform

The offences in Divisions 270 and 271 were amended in 2013 by the *Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth), which criminalised forced marriage and harbouring a victim, and established the standalone offences of forced labour and organ trafficking. It also extended the application of the offences of deceptive recruiting and servitude to apply to conduct occurring outside the sex industry.

In 2015, the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015* (Cth) provided that the slavery offences have universal jurisdiction. In 2015, the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015* (Cth) expanded the definition of 'forced marriage' to increase penalties and make clear that the

² In 2019, the Australian Government removed all references to the term 'child pornography' in Commonwealth legislation, replacing it with the term 'child abuse material' to reflect the seriousness of the harm and to avoid conflating material depicting the sexual abuse of children with material depicting sexual activity between consenting adults. State and territory legislation may also refer to 'child exploitation material' or 'child sexual abuse material.'

offences apply where a person cannot give their free and full consent to marry, including for reasons such as age or mental capacity.

In 2019, the *Combatting Child Sexual Exploitation Legislation Amendment Act 2019* (Cth) amended the definition of forced marriage to explicitly capture all marriage involving children under 16. This made clear that a person under the age of 16 cannot consent to be married and specified that any offence involving a child under 16 would automatically attract the aggravated maximum penalty of nine years' imprisonment.

There have been no legislative reforms to offences against Divisions 270 and 271 of the Criminal Code since 2019.

Complementary legislation

The Modern Slavery Act 2018

The *Modern Slavery Act 2018* (Cth) (Modern Slavery Act) commenced on 1 January 2019 and complements Australia's comprehensive criminal justice response to modern slavery. The Modern Slavery Act provides a transparency framework that aims to drive business and government action to address modern slavery in global supply chains and operations. It requires certain large entities to submit annual statements that outline modern slavery risks in supply chains and operations and actions taken to mitigate these risks. The Modern Slavery Act also applies to the Australian Government, requiring the Government to submit an annual Commonwealth modern slavery statement. The Modern Slavery Act is currently under statutory review, reporting after March 2023.

The Modern Slavery Act is explicitly linked to Divisions 270 and 271. Modern slavery is defined in section 4 of the Modern Slavery Act as conduct that would constitute an offence under Divisions 270 and 271 of the Criminal Code. This definition is being considered as part of the statutory review of the Modern Slavery Act.

The Migration Act 1958

The *Migration Act 1958* (Cth) (Migration Act) creates offences of allowing a person to work, or referring a person for work, if the person is an unlawful non-citizen or a lawful non-citizen working in breach of a visa condition. The offences are escalated to aggravated offences if the worker is being exploited and the person knows of, or is reckless to, that circumstance. The Migration Act also provides for civil employer sanctions in the form of infringement notices and non-fault civil penalties, supplementing Australia's criminal offences.

Human Trafficking Visa Framework

Under the Migration Regulations 1994 (Cth), Australia's Human Trafficking Visa Framework enables foreign nationals, who do not already hold a valid visa and are suspected victims and survivors of modern slavery to remain lawfully in Australia. Like Australian citizens and other valid visa holders, they are then able to access support through the Government's dedicated Support Program for victims and survivors. A suspected victim and survivor may be eligible for a permanent visa to remain in Australia where they have contributed to an investigation or prosecution of an alleged offender and would be in danger if they returned to their home country.

Workplace laws

The *Fair Work Act 2009* (Cth) (Fair Work Act) empowers the Fair Work Ombudsman to enforce compliance with the Fair Work Act, and associated industrial instruments including awards

and registered agreements. The minimum entitlements, conditions and protections provided under the Fair Work Act, and associated instruments, apply to all employees in the national workplace system, including migrant workers and international students.

The Proceeds of Crime Act 2002

The *Proceeds of Crime Act 2002* (Cth) provides a scheme for tracing, restraining and confiscating the proceeds of crimes against Australian law, including for trafficking in persons, slavery and slavery-like practice offences. These proceeds can then be returned to the Australian community to fund crime prevention and law enforcement initiatives and diversionary measures relating to drug use and addiction.

Child sexual exploitation and abuse

Australia has a robust criminal justice response to prevent, investigate and prosecute all forms of child sexual abuse and exploitation. State and territory criminal laws include child sexual abuse offences. They also set an age of consent for sexual activities. Commonwealth law includes offences for child sexual abuse committed through a carriage service (such as the Internet) or postal service and offences that are committed by Australians overseas. It is against Commonwealth law to import and export child abuse material, as well as the importation or possession of childlike sex dolls. Commonwealth law also restricts reportable child sex offenders' ability to leave Australia without permission.

State and territory legislation

State and territory governments are responsible for regulating the sex work industry in Australia. Most jurisdictions have enacted legislation relating to sexual servitude and deceptive recruiting which would allow for the prosecution of cases involving sexual exploitation. All jurisdictions have a range of offence provisions to cover related crimes such as assault, sexual assault, forced prostitution, kidnapping and deprivation of liberty. New South Wales (NSW) has also criminalised forced marriage (of persons aged under 18) in the *Crimes Act 1900* (NSW).

The enforcement of Commonwealth offences relating to trafficking in persons, slavery and slavery-like practices is the responsibility of the AFP, while the enforcement of state and territory offences is generally the responsibility of the relevant state or territory policing services. However, state and territory offences may be used in conjunction with, or in place of, Commonwealth offences. Historically and currently, state and territory policing services have referred trafficking in persons and slavery-related matters to the AFP as the lead investigative agency. Law enforcement are reliant on the policing powers afforded to them by various legislation, which may vary between jurisdictions.

Question 1: Are stakeholders observing interactions between offences in Divisions 270 and 271 and other laws and frameworks that are impeding, or have the potential to impede, effective investigations and prosecutions of offences in Divisions 270 and 271?

Reports and investigations

Reports and investigations of offending against Divisions 270 and 271 have increased over time. Global estimates find that there are increasing numbers of victims and survivors globally, a trend which is reflected in Australia's rising case numbers. In Australia, frontline officer training and awareness-raising initiatives under consecutive National Action Plans may also

account for some increased identification and reporting of suspected cases. There have also been significant government and non-government efforts to increase public awareness of these crimes and their indicators. Five-year trends are represented in the table and graph below:

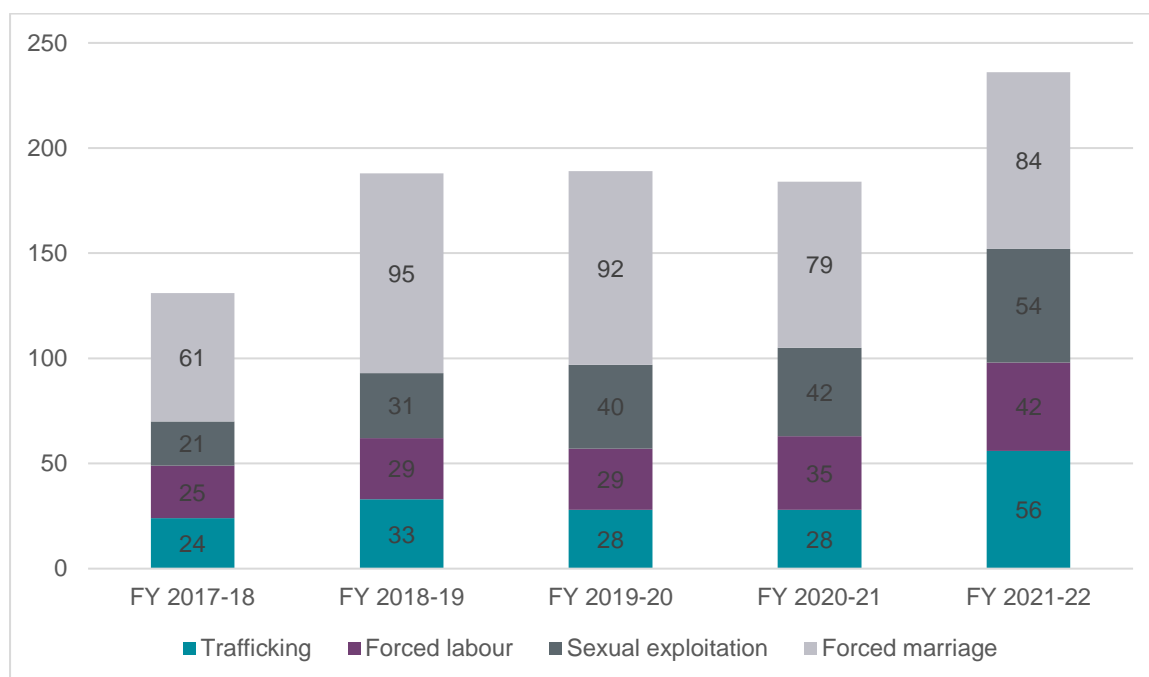
Table 1: Number of reports of trafficking in persons, slavery and slavery-like practices received by the AFP by financial year

Offence	2017/18 FY	2018/19 FY	2019/20 FY	2020/21 FY	2021/22 FY	
Forced marriage	61	95	92	79	84	↑
Sexual exploitation	21	31	40	42	54	↑
Forced Labour	25	29	29	35	42	↑
Child trafficking	12	7	<5	12	21	↑
Trafficking	24	33	28	28	56	↑
- Exit trafficking*	13	13	24	16	37	↑
Debt Bondage	<5	9	<5	<5	6	↑
Domestic Servitude	9	9	20	15	18	↑
Slavery	<5	<5	<5	6	8	↑
Deceptive Recruiting	<5	<5	6	<5	5	↑
Organ Trafficking	0	<5	0	<5	0	↓
Harbouring	<5	0	0	0	0	↔
Other	0	0	0	0	0	↔
TOTAL	162	220	223	224	294	↑

* Exit trafficking is a subset of all trafficking data.

Alt text: Table comparing the number of reports of trafficking in persons, slavery and slavery-like practices received by the AFP by each financial year from 2017-18 to 2021-22.

Graph 2: Number of reports of forced marriage, sexual exploitation, forced labour and trafficking in persons received by the AFP by financial year



Alt text: Column chart comparing the number of reports of forced marriage, sexual exploitation, forced labour and trafficking in persons received by the AFP by each financial year from 2017-18 to 2021-22.

Prosecutions and convictions

The CDPP is an independent prosecution service established by the Australian Parliament to prosecute offences against Commonwealth law. The CDPP has no investigative function, with matters referred to the CDPP from the AFP and other investigative agencies. The Prosecution Policy of the Commonwealth guides the decision to proceed with trafficking in persons, slavery or slavery-like prosecutions.

In the 2021-22 financial year, the CDPP commenced three new prosecutions and continued with 22 prosecutions before the courts. Since 2004 (and to 30 June 2022), 31 people have been convicted of offences against Divisions 270 and 271 of the Criminal Code. A summary of convictions is at Appendix B.

Case progression through the criminal justice process

In 2021, the Australian Institute of Criminology (the AIC) published its report 'Attrition of human trafficking and slavery cases through the Australian criminal justice system.'³ The report highlights some of the challenges contributing to high attrition rates as cases progress through the Australian criminal justice system. Data limitations mean that an attrition rate for the

³ Samantha Lyneham, '[Attrition of human trafficking and slavery cases through the Australian criminal justice system](#)' (2021) *Trends and issues in crime and criminal justice* 640, Australian Institute of Criminology, Canberra.

complete criminal justice process is not available. However, the AIC calculated an overall attrition rate of 73% between the number of defendants referred for prosecution and the number of defendants convicted. Similarly, an attrition rate of approximately 52% was calculated from the point of charging to conviction. These rates are consistent with international commentary on low conviction rates globally.

Key challenges identified by the AIC as contributing to attrition rates include:

- Victim and survivor identification and cooperation, including barriers to correctly identifying victims and survivors, and victims and survivors sometimes not self-identifying as a victim and survivor, lacking trust in criminal justice practitioners and processes, and viewing cooperation as inconsistent with their best interests.
- The impacts of trauma on victims and survivors, including impacts affecting recollection and a consistent account of experiences, which may lead to defence questioning victim and survivor credibility.
- Complexity of legislation and lack of case law, and
- Lack of specialised training and retention of criminal justice practitioners with appropriate experience.

Many of these challenges are connected to factors that are outside of Divisions 270 and 271 and are being further considered in the whole-of-government response to modern slavery, guided by the National Action Plan. This includes through initiatives to strengthen training and awareness-raising, a targeted review of Australia's visa framework, and a targeted review of support and legislative protections, defences and remedies for victims and survivors. However, this Discussion Paper does include some discussion relevant to addressing challenges with victim and survivor testimony, including by enquiring about the framing of offences and the applicability of general defences in the Criminal Code to victims and survivors.

Global trends and practices

Global trends

Trafficking in persons, slavery and slavery-like practices have existed throughout human history across all cultures and continents. The heart of these practices has not changed – people exploiting other people for profit or other gain. However, the settings in, and methods through which, modern slavery practices take place continue to evolve, as does our collective understanding of how these practices manifest.

The 2021 Global Estimates of Modern Slavery by Walk Free and the International Labour Organization in collaboration with the International Organization for Migration⁴, highlight some global trends. These include:

- An estimated 49.6 million people are living in situations of modern slavery, with this figure representing an increase of approximately 10 million victims and survivors since the previous estimate in 2017.
- 27.6 million of these modern slavery victims and survivors are in situations of forced labour, with approximately 12% of these being children. More than half of forced labour cases are in sectors other than commercial sexual exploitation.
- 22 million modern slavery victims and survivors are in forced marriages, with two thirds of victims and survivors being women and girls. Once forced to marry, risks of sexual exploitation, violence, domestic servitude and other forms of exploitation and harm rise.
- Crises like the COVID-19 pandemic, climate change and armed conflict are together heightening modern slavery risks and contributing to modern slavery drivers like poverty, unemployment, lack of education, unsafe migration pathways, gender inequality and gender-based violence.
- The majority of victims and survivors of modern slavery continue to be women and girls.
- Modern slavery continues to occur in every country and region of the world. More than half of the world's victims and survivors are in Asia and the Pacific.

The United Nations Office on Drugs and Crime (UNODC)'s Global Report on Trafficking in Persons acknowledges similar trends, including that vulnerabilities to trafficking have vastly increased in connection to drivers like extreme poverty and the COVID-19 pandemic.⁵ UNODC's report also explores new and emerging trends including the role of technology in trafficking cases, which is further discussed below.

⁴ International Labour Organization, Walk Free and International Organization for Migration, [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#) (Geneva, 2022).

⁵ United Nations Office on Drugs and Crime (UNODC), [Global Report on Trafficking in Persons](#) (Report, 2020).

The role of technology

Technology has shaped, and is continuing to shape, the world. Criminals are often early adopters of new and emerging technologies, and use technology to further their offending and evade detection by law enforcement. Technology offers traffickers:

- The ability to distance themselves from the physical location of the victims and survivors and the contexts in which they are exploited, helping evade detection and expanding the potential geographic scope of offenders' operations
- Encryption, which reduces the evidence trail needed to detect and establish criminal conduct
- Anonymising technology that means a victim and survivor may not know who they are communicating with
- Increasing platforms and methods to contact and to coerce, threaten and deceive victims and survivors. This includes through websites, job sites, dating sites and social media
- Greater reach and potential to connect with 'customers' or 'consumers' of materials, products, labour and services produced or provided through exploitation, potentially covertly. This includes images and videos produced through sexual exploitation.

UNODC's Global Report on Trafficking in Persons includes findings on the role of technology in trafficking cases, drawn from analysis of 79 court cases.⁶ UNODC finds that digital platforms are used to advertise, recruit and exploit victims and survivors using a range of methods:

'internet-based trafficking has become increasingly varied; spanning from simple setups of advertising victims online, to traffickers' use of communications platforms to broadcast exploitation abroad, to interacting with potential victims or transferring money between trafficking group members. There have been cases of traffickers who have coerced victims into establishing rapport with customers in chat rooms monitored by the traffickers, and there is ample evidence of the growth of child sexual abuse material online, some of which some is related to trafficking in persons. Traffickers have coerced their victims into forced crime, forced labour or have used internet technologies to advertise the selling of organs, such as kidneys harvested from impoverished individuals'⁷.

The Special Rapporteur on Contemporary Forms of Slavery, including its Causes and its Consequences, similarly finds that organised criminal groups use technology including social media, smartphones, internet, and encrypted communication tools, with more sophisticated groups using the dark web or dark net.⁸

In Australia too, law enforcement officials have encountered cases where technology has been used to perpetrate offences in Divisions 270 and 271 of the Criminal Code. For example, technology has been used by perpetrators to deceptively lure victims and survivors to Australia for the purpose of sexual exploitation and as a means to continue exploiting victims and survivors by threatening to harm loved ones or by threatening to expose the activities of the victims and survivors if they leave their exploitative situation. Technology is also allowing

⁶ Ibid.

⁷ Ibid 120.

⁸ United Nations General Assembly (UNGA), 'Role of organized criminal groups with regard to contemporary forms of slavery' (2021) *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, A/76/170.

perpetrators to facilitate and financially benefit from the exploitation with additional layers of protection, for example by protecting their identity or allowing them to engage in criminal activities from a distance.

Online child sexual exploitation and abuse

Australia has separate legal frameworks for addressing child sexual abuse and exploitation, including abuse and exploitation that occurs online. Divisions 272, 273, 471 and 474 of the Criminal Code provide key offences including:

- Sexual intercourse/sexual activity with a child outside Australia (sections 272.8 and 272.9)
- Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia (section 273.6)
- Using a carriage service for sexual activity with a person under 16 years of age (section 474.25A)
- Using a carriage service for child abuse material (section 474.22)
- Using a carriage service to procure persons under the age of 16 (section 474.26); and
- Using a carriage service to transmit indecent communication to a person under the age of 16 (subsection 474.27A (1)).

Overseas child abuse offences apply to conduct by Australian citizens, residents and body corporates and carry high maximum penalties of up to life imprisonment for aggravated offending. Offences for use of a carriage or postal service to commit a child sexual abuse offence also attract maximum penalties of up to 30 years' imprisonment for an aggravated offence.

Under the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030*, the Government is reviewing the comprehensiveness of the child sexual abuse offences in the Criminal Code with a view to ensuring they are fit-for-purpose and reflect modern offending trends.

For this targeted review, it is relevant and within scope to consider how perpetrators use technology to perpetrate modern slavery crimes, including where this offending may overlap with child sexual exploitation and abuse offences, and reflect on the application of Divisions 270 and 271 to such scenarios.

Question 2: To what extent have stakeholders encountered cases where technology (including devices and platforms) has been used by perpetrators to facilitate, recruit, advertise or exploit victims and survivors into trafficking in persons, slavery or slavery-like practices?

Question 3: Are there gaps in offences in Divisions 270 and 271 that would prevent their application to cases where technology is used to facilitate, recruit, advertise or exploit victims and survivors into trafficking in persons, slavery or slavery-like practices? If so, what are the observed gaps and how might they be addressed?

Question 4: Are Divisions 270 and 271 appropriately future-proof and flexible enough to apply to the misuse of new and emerging forms of technology and online conduct? If not, why not, and are specific changes to Divisions 270 and 271 recommended?

Practices that can be connected to trafficking in persons, slavery and slavery-like offences

Female Genital Mutilation / Cutting

The World Health Organisation (the WHO) is the international authority on identifying and eliminating female genital mutilation / cutting (FGM/C). The WHO describes FGM/C as any procedure that involves injury to, or removal of, external female genitalia for non-medical reasons.⁹ It can cause serious and long-lasting health problems. In Australia, FGM/C is illegal in every state and territory. This includes performing FGM/C and taking a person overseas for the purposes of FGM/C. However, there is some inconsistency between state and territory laws about the extent to which offences apply to preparatory or facilitatory conduct.

Globally, there is reported co-occurrence between modern slavery and forms of gender-based violence including FGM/C, though there is limited data and findings vary.¹⁰ However, FGM/C is not considered a form of exploitation for the purpose of offences against Divisions 270 and 271 of the Criminal Code. The following section of this paper on 'key concepts and definitions' includes further discussion on the definition of exploitation and invites stakeholder views on the ongoing appropriateness of the definition and its ability to apply to contemporary forms of trafficking in persons, slavery and slavery-like practices in an Australian context.

Dowry abuse

Dowry traditions differ across countries and cultures. It is commonly a practice that refers to money, property or gifts that are transferred by a woman's family to her husband upon marriage. The practice of dowry is not in itself a form of abuse or violence. However, any act of coercion, violence or harassment associated with the giving or receiving of dowry at any time before, during or after marriage is a form of abuse and is recognised in Australia as a form of domestic and family violence.

In 2018, the Senate Standing Committees on Legal and Constitutional Affairs conducted an inquiry on the practice of dowry and the incidence of dowry abuse in Australia. The Committee's final report acknowledged linkages between dowry abuse and trafficking in persons, slavery and slavery-like practices and recommended the inclusion of dowry abuse as a possible indicator of exploitation for the purposes of Divisions 270 and 271 and that this be included in any training programs.¹¹ Dowry abuse is a recognised modern slavery indicator in Australia and used in training for frontline officials, including the AFP.

In an Australian context, depending on the circumstances, dowry abuse may fall within scope of offences at Divisions 270 and 271. For example, if a person were to be inherited, sold or transferred into marriage for payment, this may constitute a slavery offence under Division 270, punishable by up to 25 years' imprisonment.

Child sexual exploitation and abuse

Child sexual exploitation and abuse can involve, or overlap with, trafficking in persons, slavery and slavery-like practices. For example, a report by the International Justice Mission considers

⁹ World Health Organization, [Female genital mutilation](#) (Web Page, 2022).

¹⁰ See, for example, UNICEF, [Understanding the Relationship between Child Marriage and Female Genital Mutilation: A statistical overview of their co-occurrence and risk factors](#) (Report, 2021).

¹¹ Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, [The practice of dowry and incidence of dowry abuse in Australia](#) (Report, 2019).

how the Trafficking Protocol (referred to as the Palermo Protocol below) applies to online sexual exploitation of children and states:

*‘Over the past decade, law enforcement agencies have identified a global increase in known cases of exploitation with a commercial element....typically, an offender...who has access to children and abuses or exploits them to produce child sexual exploitation material (CSEM). This material is often transmitted via live-streaming video communications platforms. These acts constitute trafficking in persons, as defined by the Palermo Protocol. The economic payment for the CSEM or exploitation display is what makes this crime unique and distinct from other common, but non-commercial, forms of internet crimes against children’.*¹²

As outlined in the previous section of this paper, Australia has an extensive framework in place to prevent, investigate and prosecute all forms of child sexual exploitation and abuse across both Commonwealth and state and territory laws and frameworks. In addition to offences at Divisions 270 and 271, the Criminal Code contains offences in Divisions 272 (child sexual abuse offences outside Australia), 273 (child abuse material offences outside Australia), 471 (postal service offences) and 474 (carriage service offences) that criminalise child sexual exploitation and abuse, including exploitation and abuse that occurs online. This means that child sexual exploitation and abuse that occurs in travel and tourism is also captured by Australia’s criminal offences.

Surrogacy

Surrogacy, including forced surrogacy, can in specific circumstances constitute trafficking in persons, slavery or a slavery-like practice. In 2016, the House of Representatives Standing Committee on Social Policy and Legal Affairs conducted an Inquiry into the Regulatory and Legislative Aspects of International and Domestic Surrogacy Arrangements and noted links between surrogacy practices and trafficking in persons.¹³

Under Australian Commonwealth law, surrogacy practices may amount to an offence against Division 270 or 271 of the Criminal Code. For example, surrogacy for an exploitative purpose may amount to an offence of child trafficking, domestic child trafficking or a slavery-like offence.

Surrogacy is regulated by state and territory governments. All jurisdictions have legislation dealing with surrogacy and have criminalised commercial surrogacy. The Australian Capital Territory, NSW and Queensland have also legislated to make it illegal for residents of those jurisdictions to enter into commercial surrogacy arrangements in foreign jurisdictions.

People smuggling

People smuggling is the organised irregular movement of people across borders, usually on a payment-for-service basis, and does not involve ongoing exploitation of the victim by the offender. People smuggling is therefore distinct from trafficking in persons, which involves exploitation. However, while people smuggling and trafficking in persons are different crimes, people who are smuggled may be particularly vulnerable to exploitation and may become a victim and survivor of trafficking in persons, slavery or a slavery-like practice upon reaching

¹² International Justice Mission, [Online Sexual Exploitation of Children in the Philippines: Analysis and Recommendations for Governments, Industry and Civil Society](#) (Report, 2020) 16.

¹³ Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, [Surrogacy Matters. Inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements](#) (Report, 2016).

their destination country. People smuggling is an offence in the *Migration Act 1958* (Cth) and the Criminal Code.

Poor or harsh working conditions

Labour exploitation occurs on a spectrum that encompasses serious forms of labour exploitation criminalised in Divisions 270 and 271 of the Criminal Code. Conduct that falls below that threshold is dealt with under Australian workplace laws and frameworks. The FWO is responsible for investigating matters involving claims of substandard working conditions that do not meet the threshold of a trafficking in persons, slavery or slavery-like practice. Where the FWO identifies behaviour that may amount to a trafficking, slavery or slavery-like practice, this is referred to the AFP as the investigating agency for these crimes.

Migration system and visa system exploitation

Globally, migration and visa systems can be exploited to facilitate trafficking in persons, slavery and slavery-like practices. For example, the International Organization for Migration and Walk Free published a report in 2019 on *Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour*¹⁴, which includes some discussion of offender characteristics and the methodologies used by offenders to perpetrate modern slavery crimes. One characteristic highlighted is superior knowledge of migration processes that can give perpetrators a position of power over victims and survivors. This can include knowledge of procedures in destination countries, as well as knowledge of methods that migrants can use to get there. This superior knowledge can create power imbalances that increase migrants' vulnerability to being trafficked or being exploited upon arrival in a destination country.

On 2 September 2022, the Minister for Home Affairs, the Hon Clare O'Neil MP announced a comprehensive review of Australia's migration system to ensure it better meets existing challenges and sets a clear direction for the coming decades. The review will inform development of a holistic strategy that articulates the purpose, structure and objectives of Australia's migration system. The strategy will be informed by a review of the current visa framework, including both the temporary and permanent visa programs.

Further information on the comprehensive review of Australia's migration system is available on the Department of Home Affairs website at [A Migration System for Australia's Future \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au). This targeted review of Divisions 270 and 271 of the Criminal Code is separate to this work and will not consider Australia's migration settings.

Additionally, Australia's National Action Plan includes an initiative to undertake a targeted review of Australia's visa framework, including to identify and reduce vulnerabilities to modern slavery.

¹⁴ Fiona David, Katherine Bryant, Jacqueline Joudo Larsen, [Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour](#) (International Organization for Migration and Mindereroo Foundation, 2019).

Key concepts and definitions

The UNTOC's Trafficking Protocol defines trafficking in persons as:

'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.'

Australia's domestic legislative framework draws from this definition, with many offences in Divisions 270 and 271 requiring an element of coercion, threat or deception. Exploitation is also a common purpose or result of offences at Divisions 270 and 271 and the definition of exploitation is linked to both Australia's trafficking in persons offences, as well as the slavery-like practices criminalised at Division 270.

Coercion, threat and deception

Coercion

Australia's definition of coercion is at section 270.1A and includes coercion by force, duress, detention, psychological oppression, abuse of power, and taking advantage of a person's vulnerability. This definition is non-exhaustive and captures both physical and non-physical means of coercion.

Investigations into trafficking in persons, slavery and slavery-like practices in Australia have shown that coercion can be subtle and nuanced (particularly psychological forms of coercion). Australian investigators have also observed that psychological forms of coercion are more common than physical forms of coercion in cases identified in Australia. However, there is limited case law to clearly indicate the thresholds at which coercion (including psychological forms of coercion) may be made out in a prosecution. There can also be limited physical evidence when psychological forms of coercion have taken place, which increases reliance on witness accounts.

Coercion is also being considered by the Australian Government in other contexts. In a family and domestic violence context, coercive control involves perpetrators using abusive behaviours in a pattern over time in a way that creates and maintains power and dominance over another person or persons. Perpetrators may use physical or non-physical abusive behaviours, or a combination of both.

There is currently no shared national understanding of coercive control and the Australian Government and state and territory governments are working together to develop National Principles to Address Coercive Control (the National Principles), which will outline a common understanding of coercive control and its impacts. The National Principles are aimed at raising awareness of coercive control, informing more effective responses to family and domestic violence, and promoting more consistent support and safety outcomes for victim-survivors. Work to develop the National Principles may also inform strengthened understanding of how coercion can manifest in trafficking in persons, slavery and slavery-like practices.

Threat

Threat is defined at section 270.1A to mean a threat of coercion, or a threat to cause a person's deportation or removal from Australia, or a threat of any other detrimental action, unless there are reasonable grounds for the threat of that action in connection with the provision of labour or services by the person. This includes a threat made by any conduct, whether express or implied and whether conditional or unconditional.

The definition of threat is linked to the definition of coercion. Reading a 'threat of coercion' with the definition of coercion at section 270.1A means that the definition includes a threat of force, duress, detention, psychological oppression, abuse of power, and taking advantage of a person's vulnerability.

Deception

The term deceive is defined at section 271.1 to mean mislead as to fact (including the intention of any person) or as to law, by words or other conduct.

The Criminal Code requires that physical elements of an offence be met through a positive act or positive conduct. For example, providing false information may meet the definition of deceive at section 271.1 because it involves a positive act that misleads. Conversely, intentionally withholding information (for example about workplace conditions or pay) may not meet the definition of deceive at section 271.1 because it is an omission and not a positive act.

Division 4 of the Criminal Code specifies that an omission to perform an act can only be a physical element if the law creating the offence makes it so, or the law creating the offence impliedly provides that the offence is committed by an omission to perform an act that by law there is a duty to perform. There is no explicit provision to make a deceptive omission an element of offences in Divisions 270 and 271.

Question 5: What kind of conduct may constitute deception through omission as relevant to offences in Divisions 270 and 271 of the Criminal Code?

Question 6: Should reforms be considered to broaden the application of Divisions 270 and 271 to explicitly include conduct that includes deception by omission?

Question 7: What unintended consequence might arise that would require consideration in drafting any reforms to the definition of deceive?

Coercion, threat and deception as elements of offences at Divisions 270 and 271

The terms coercion, threat, and deception are often grouped together when forming an element of an offence in Division 270 and 271. For example, forced labour, forced marriage and the trafficking in persons offences (with some exceptions) include the use of 'coercion, threat or deception' as an element of the offence. Collectively, these terms apply to both physical and non-physical conduct and are intended to capture a broad range of circumstances, including where the coercion, threat or deception is subtle.

Question 8: Do the definitions of coercion, threat and deception collectively capture the types of conduct used in offending in Divisions 270 and 271, including subtle forms of coercion? If not, why not, and are specific solutions recommended?

Exploitation

Australia's definition of exploitation at section 271.1A defines exploitation to include slavery or a condition similar to slavery, servitude, forced labour, forced marriage, and debt bondage.

One feature of Australia's definition of exploitation is that it is an exhaustive definition. This means that exploitation can only be established where slavery or a condition similar to slavery, servitude, forced labour, forced marriage, or debt bondage has taken place.

The UNODC 2018 Issues Paper on the International Legal Definition of Trafficking in Persons¹⁵ recommends that domestic legislation capture all forms of exploitation, whether through stipulating additional forms of exploitation as needed, by flexibly interpreting listed forms to capture exploitation that is encountered in practice or by ensuring that stipulated forms of exploitation are non-exhaustive and offered at a minimum.

Australia's definition is intended to be comprehensive and capture exploitation in all settings and all industries. However, stakeholders may be observing some manifestations of exploitation that fall outside Australia's current definition that are worth consideration as part of this targeted review.

In considering the forms of exploitation that may be relevant to Divisions 270 and 271, it is important to note that trafficking in persons, slavery and slavery-like practices are very serious offences and that less serious forms of exploitation (like lower-level workplace offences) are dealt with in other legal and non-legal frameworks. Focusing on serious forms of exploitation is also highlighted by UNODC as an important consideration in developing legislation that gives effect to the Trafficking Protocol. For example, UNODC's Issues Paper on the International Legal Definition of Trafficking in Persons states 'the need for breadth and flexibility must be balanced by clear parameters that preserve the spirit of the Protocol.' The Paper later notes that 'a threshold of severity is often relevant.'¹⁶

Another important aspect of the concept of 'exploitation' is that it is distinct from harm alone. There are alternate laws and frameworks at the Commonwealth and state and territory levels that address a wide range of types of conduct that do harm to individuals. Trafficking in persons, slavery and slavery-like practices are instead concerned with *exploitation*, which invariably does involve and do harm to victims and survivors, but involves an additional layer of control, profit or advantage gained.

In considering Australia's definition of exploitation, it is worth noting that all practices that currently form part of the definition at 271.1A are also separately criminalised in Division 270. Any stakeholder suggestions about expanding the definition of exploitation might also contemplate whether a corresponding separate offence is desirable in Division 270.

This link of Australia's exploitation definition to a *condition* of exploitation may also impact whether it is desirable to amend the definition at 271.1A to be non-exhaustive. Generally, a non-exhaustive definition will link back to the ordinary meaning of the word. However,

¹⁵ UNODC, [Issues Paper on the International Legal Definition of Trafficking: Consolidation of research findings and reflection on issues raised](#) (Report, 2018).

¹⁶ Ibid 24.

exploitation in the context of Divisions 270 and 271 does not link to the ordinary meaning of exploitation but instead to specific conditions (slavery or a practice similar to slavery, servitude, forced labour, forced marriage and debt bondage). One option to address this might be to add to the definition of exploitation a paragraph or clause that more broadly describes what might constitute a condition of exploitation.

Exploitation of children in orphanages and other institutional settings

One exploitation setting that has received attention in Australia is exploitation of children in orphanages and other institutional settings. This is explored further in the section of this paper 'Division 271 – Trafficking in Persons', which includes consideration of the forms of exploitation that may occur when a child is trafficked into an orphanage or other institutional setting.

Question 9: Are stakeholders observing serious forms of exploitative conduct that are not captured by Australia's definition of exploitation and are appropriate for consideration as part of Australia's response to modern slavery (ie involving very serious forms of exploitation that are not captured by other laws and frameworks)? If so, what is being observed?

Question 10: If the definition of exploitation were expanded, how should this be done? For example, through stipulating additional forms of exploitation, adding to the definition with a 'catch-all' description of exploitation, or amending the definition so that it is a non-exhaustive definition?

Irrelevance of consent

The principle of irrelevance of consent is underpinned in the Trafficking Protocol, which highlights that the 'means' used by offenders (including coercion, threat or deception) renders any apparent consent by victims to their exploitation irrelevant. In other words, a person cannot give free and full consent (and therefore cannot consent), where they have been coerced, threatened or deceived into being trafficked, or into conditions of slavery and slavery-like practices. In cases of trafficking in children, the 'means' element of the offence does not apply and so the apparent consent of a child is always irrelevant to establishing that an offence has taken place.

Establishing a lack of consent is highlighted by UNODC to be a key challenge in prosecuting trafficking in persons offences worldwide.¹⁷ While many jurisdictions have specific directions or provisions in law that guide understanding of the principle of irrelevance of consent, the UNODC reports that applying the principle in practice has proved challenging globally.

Divisions 270 and 271 specifically address the issue of consent. For example, section 270.11 provides that 'it is not a defence in a proceeding for an offence against this Division that a person against whom the offence is alleged to have been committed consented to, or acquiesced in, conduct constituting any element of the offence.' This is repeated at 271.11B, applying to offences at Division 271.

Despite these provisions, the apparent or implied consent of victims and survivors can cause challenges for investigations and prosecutions. For example, difficulties understanding 'consent' in offences against Divisions 270 and 271 have arisen in scenarios where a victim and survivor does not remove themselves from exploitative conditions where an opportunity

¹⁷ UNODC, [The Role of 'Consent' in the Trafficking in Persons Protocol](#) (Report, 2014).

may exist, or in circumstances where the victim and survivor may have consented to some aspects of their circumstance but not to all aspects.

A question arising is whether further or clearer direction or guidance would be helpful or desirable to strengthen the enshrining of the principle of irrelevance of consent in Divisions 270 and 271. This might include through specifying that a person cannot consent to certain types of conduct or harm. An example of this is in Australia's forced marriage offences which are framed to make clear a person under the age of 16 cannot consent to be married. Another option might be providing additional guidance on relevant evidence, to further articulate factors that can vitiate consent. There might also be merit in considering positively defining 'consent' for the purpose of Divisions 270 and 271 and explicitly providing that consent must be freely and fully given for it to be real consent. However, internationally, there is little precedent for consent being positively defined in the context of trafficking in persons, slavery or slavery-like practice offences.

Question 11: Is the principle of irrelevance of consent adequately enshrined in Divisions 270 and 271? If not, why not, and how could this be addressed?

Division 270 – Slavery and slavery-like practices

Slavery

Under international law, Article 1 of the Slavery Convention defines slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. The prohibition against slavery has long been recognised under international law from which no exception is permitted. Slavery is also dealt with in the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, which expands the definition of slavery to encompass a range of slavery-like practices including debt bondage, serfdom, forced marriage and certain forms of child exploitation.

Slavery has been a criminal offence in Australia since 1824, with the application of the *Slave Trade Act 1824* (UK). Slavery offences were subsequently inserted into Division 270 of the Criminal Code in 1999, and were strengthened through the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth).

Broadly consistent with Article 1 of the Slavery Convention, slavery is defined in Division 270 as the condition of a person over whom any or all of the powers attaching the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

There are two slavery offences at section 270.3 of the Criminal Code. The first offence carries a maximum penalty of 25 years' imprisonment and criminalises:

- Reducing a person to slavery;
- Possessing a slave or exercising over a slave any of the other powers attaching to the right of ownership;
- Engaging in slave trading;
- Entering into any commercial transaction involving a slave; or
- Exercising control or direction over, or providing finance for, any act of slavery trading or any commercial transaction involving a slave.

The second offence carries a maximum penalty of 17 years' imprisonment and criminalises:

- Entering into any commercial transaction involving a slave;
- Exercising control or direction over, or providing finance for, any commercial transaction involving a slave; or
- Exercising control or direction over, or providing finance for, any act of slave trading; *and*
- Is reckless as to whether the transaction or act involves a slave, slavery, slave trading or the reduction of a person to slavery.

Slave trading is defined at 270.3(3) to include the capture, transport or disposal of a person with the intention of reducing the person to slavery, or the purchase or sale of a slave.

Case Example

A group of women were recruited and voluntarily entered into contracts to work as sex workers in a brothel owned by the offender. In entering the contracts, the women incurred large debts that were claimed to include costs of bringing the women to Australia and providing accommodation and food. Upon arrival, the women's passports and travel documents were confiscated. Their movements were restricted and controlled and they were required to work long hours up to seven days a week. Their debts were only reduced by a small amount for the work they were required to do.

One challenge that may arise in slavery investigations and prosecutions is establishing the duration of the condition. This is also relevant to investigations and prosecutions of servitude and forced labour offences. For example, a person may be in a condition of slavery, servitude or forced labour for a period of time, but may be permitted at certain points to engage in an activity of a personal nature, or leave their place of work or residence. Nonetheless, the condition may be unbroken because the victim and survivor is not able to freely and fully exercise their human rights and freedoms and remains in a condition of slavery, servitude or forced labour. An example of this might be where a victim and survivor is permitted to visit a doctor unsupervised. While this situation may point to an opportunity to leave or escape, it is not necessarily indicative of a level of freedom that is inconsistent with the condition of slavery, servitude or forced labour.

Question 12: Is additional guidance required to strengthen consistent understandings on the duration and continuity of a condition of slavery, servitude and forced labour? If so, what form might this guidance take?

Servitude and forced labour

Australia's servitude and forced labour offences are discussed together in this subsection because of the similarities between the elements of the offences.

Servitude

Servitude offences (previously limited to sexual servitude) were introduced in the Criminal Code in 1999.

Section 270.4 of the Criminal Code defines servitude as the condition of a person (the victim and survivor) who provides labour or services, if, because of the use of coercion, threat or deception:

- a reasonable person in the position of the victim and survivor would not consider himself or herself to be free:
 - to cease providing the labour or services; or
 - to leave the place or area where the victim and survivor provides the labour or services; and
- the victim and survivor is significantly deprived of personal freedom in respect of aspects of their life other than the provision of the labour or services.

The coercion threat or deception can be made against a person who is not the victim and survivor, such as a victim and survivor's family or friends. The victim and survivor may also be

in a condition of servitude whether or not escape from the condition is practically possible for the victim and survivor, or the victim and survivor has attempted to escape from the condition.¹⁸

It is both an offence to cause a person to enter into or remain in servitude and to conduct a business involving servitude. The maximum penalty is 15 years' imprisonment, or up to 20 years' imprisonment for an aggravated offence.

Case Example

Two offenders ran fraudulent call centres out of private residences in Australia. The call centres were staffed by foreign nationals who were forced to work 15 hours a day, seven days a week, for no pay. The call centre operators each had to learn a script and make up to 60 calls per shift. When AFP search warrants were executed, it was found that there were 49 workers at the two locations. Workers were required to adhere to strict rules around their work as well as eating, showering and sleeping arrangements.

The definition of servitude has many similarities to the definition of forced labour. However, the definition of servitude has an additional element that the victim is 'significantly deprived of personal freedom...' The Explanatory Memorandum for the legislation that introduced this definition states:

*'This is intended to reflect the degree of difference between the offences of slavery and servitude. To establish slavery, it must be proved that the accused exercised a power of ownership over the victim. Servitude falls short of ownership, but occurs when the offender's domination over the victim through coercion, threat or deception is such that the victim is effectively denied her or his freedom in some fundamental respect.'*¹⁹

One challenge with this definition is that there is little guidance or case law that establishes the threshold of 'significantly deprived' or that provides guidance on the types of factors or circumstances that might constitute significant deprivation. In practice, this can result in a lack of clarity about when to proceed with a charge or prosecution against servitude offences (as compared with slavery or forced labour offences that have clearer definitions and thresholds).

Question 13: Would it be desirable to legislate and include additional guidance about factors that might indicate significant deprivation? If so, what form might this take? Are there other options that might be preferable or useful to help clarify the distinction between servitude and forced labour?

Forced labour

Forced labour is defined at section 270.6 as the condition of a victim and survivor who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim and survivor would not consider himself or herself to be free to cease providing labour or services or to leave the place or area where the victim and survivor provides the labour or services.

¹⁸ [Explanatory Memorandum](#), Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 (Cth).

¹⁹ Ibid 16.

As with the servitude offences, the coercion threat or deception can be made against a person who is not the victim and survivor, such as a victim and survivor's family or friends. The victim and survivor may also be in a condition of servitude whether or not escape from the condition is practically possible for the victim and survivor, or the victim and survivor has attempted to escape from the condition.²⁰

It is an offence to engage in conduct that causes another person to enter into or remain in forced labour, as well as to conduct any business that involves the forced labour of another person. The maximum penalty is nine years' imprisonment, or 12 years for an aggravated offence.

Case Example

A couple in Australia brought a woman (the victim and survivor) to Australia from overseas to work in their home as a 'live-in domestic servant'. The woman arrived on a tourist visa and had her passport immediately confiscated. She was forced to work long hours as a domestic servant, receiving only very minimal pay per fortnight. Her duties included being the nanny, maid and cook. The couple used the woman's visa status as a way to further exert control over the woman.

Reasonable person test

A feature of both the servitude and forced labour definitions is the requirement that because of coercion, threat or deception, a reasonable person in the position of the victim and survivor would not consider himself or herself to be free to cease providing labour or services, or to leave the place or area where the victim and survivor provides the labour or services.

The phrase 'reasonable person in the position of the victim' establishes an objective and hypothetical test. It is not relevant whether a person is in fact 'free' to cease providing labour or services, nor whether they have attempted to escape. The 'reasonable person' test requires the court to consider whether a reasonable person of the same background and in the same circumstances would have been free to withdraw their labour or services, or to leave the workplace.²¹

While the reasonable person test is a common objective test in Australian law, there have been challenges applying the test in practice. For example, juries may face challenges understanding the type of trauma that has been experienced by victims and survivors and accounting for this trauma when deliberating whether a reasonable person in the victim and survivor's position would have felt free to cease providing labour or services or to leave the place where they are providing those labour or services. One solution may be to provide additional guidance about some of the factors that may be relevant to this deliberation.

Section 270.10 contains relevant evidence for proceedings for slavery-like offences. The factors set out in section 270.10 do not prevent the leading of any other evidence or limit the manner in which evidence may be given or the admissibility of evidence. However, they do provide some guidance to the court on matters that may be relevant in determining aspects of offences at Division 270.

The relevant matters specified at section 270.10 are:

²⁰ Ibid.

²¹ Ibid.

- the economic relationship between the alleged victim and survivor and alleged offender
- the terms of any contract or agreement between the alleged victim and survivor and alleged offender, and
- the personal circumstance of the alleged victim and survivor including their lawful presence in Australia, their understanding of the English language and the extent of their social and physical dependence on the alleged offender.

However, these matters are specified as being relevant to the deliberation of specific aspects of offences at Divisions 270, which are listed at 270.10(1) to include:

- For slavery-like offences, whether the alleged victim and survivor has been coerced, threatened or deceived
- For the offence of servitude, whether the alleged victim and survivor was significantly deprived of personal freedom
- For the offence of forced marriage, whether the alleged victim was incapable of understanding the nature and effect of a marriage ceremony; or
- For the offence of debt bondage, whether another person has caused the alleged victim and survivor to enter into debt bondage.

The matters specified do not include whether a reasonable person in the position of a victim and survivor would have felt free to cease providing labour or services or to leave the place where they are providing those labour or services.

One question arising is whether it would be desirable to specify at 270.10(1) that the matters at 270.10(2) may be considered in determining whether a reasonable person in the position of a victim and survivor would have felt free to cease providing labour or services or to leave the place where they are providing those labour or services.

Another question arising is whether the factors listed at section 270.10 provide appropriate guidance and whether different or additional factors should be considered.

Question 14: Should subsection 270.10(1) be expanded to make explicit that factors at subsection 270.10(2) can apply to deliberation of whether a reasonable person in the position of a victim and survivor would have felt free to cease providing labour or services or to leave the place where they are providing those labour or services?

Question 15: Do the list of matters at subsection 270.10(2) provide appropriate guidance? If not, why not, and what additional or different factors should be considered?

Through coercion, threat or deception

The servitude and forced labour definitions require that there is coercion, threat or deception and that this has the effect that a reasonable person would not consider themselves free to cease providing labour or services or to leave the place where they are providing those labour or services.

One question arising is whether there are other factors beyond being free to cease providing labour or services or being free to leave the place where those labour or services are provided that are relevant to establishing whether servitude or forced labour has occurred.

The ILO Forced Labour Convention, 1949 (No. 29) defines forced or compulsory labour as ‘all work or service which is extracted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.’ Linked to Australia’s definition is a question about whether being able to cease labour or services or leave the place where labour or services are provided are the only factors relevant to establishing whether a person has offered themselves voluntarily.

Question 16: Do the definitions of servitude and forced labour adequately capture the circumstances that are relevant to establishing whether a person has offered themselves voluntarily to provide labour or services? If not, why not, and are specific alternatives recommended?

Deceptive recruiting for labour or services

Section 270.7 contains the offence of deceptive recruiting for labour or services. A person commits this offence if they engage in conduct with the intention of inducing another person to enter into an engagement to provide labour or services, and that conduct causes the victim and survivor to be deceived about:

- The extent to which they will be free to leave the place or area where they provide labour or services
- The extent to which they will be free to cease to provide labour or services
- The extent to which they will be free to leave their place of residence
- If there is or will be a debt owed or claimed to be owed in connection with the engagement – the quantum or existence of the debt owed or claimed to be owed
- The fact that the engagement will involve exploitation or the confiscation of the victim and survivor’s travel or identity document, or
- If the engagement is to involve the provision of sexual services – the fact, or nature of the sexual services to be provided.

There have been no prosecutions against this offence since its introduction into the Criminal Code. However, this offence forms part of a tiered suite of offences that address serious forms of labour exploitation.

Question 17: Does the deceptive recruiting offence continue to be fit-for-purpose and provide an appropriate investigation and prosecution option where more serious labour exploitation offences cannot be made out?

Case Example

A man agrees to come to Australia to work as a labourer. Upon arrival in Australia, the man discovers that he has been deceived about the nature of his employment and that the employment involves the provision of sexual services. The man’s passport and travel documents are seized and he is made to stay in accommodation at the site of employment and is unable to leave.

Forced marriage

Forced marriage is defined at section 270.7A and occurs where one or both parties do not fully and freely consent to the marriage because of coercion, threat or deception, or because the victim and survivor is incapable of understanding the nature and effect of a marriage ceremony, including for reasons such as age or mental capacity. Forced marriage also occurs where either party to the marriage is under the age of 16.

It is both an offence to cause a person to enter into a forced marriage and to be a party to a forced marriage (except where the person party to the marriage is the victim and survivor). The maximum penalty for Australia's forced marriage offences is seven years' imprisonment or nine where it is an aggravated offence. If the conduct involves taking a child to be married offshore, then an offence of trafficking in children may apply with maximum penalties of up to 25 years' imprisonment (see section 271.4). Forced marriage is different to arranged marriage. In an arranged marriage, other people may be involved in bringing about the marriage, but both parties freely and fully consent. Arranged marriages are legal in Australia.

There have been no convictions against Australia's forced marriage offences since their establishment in 2013. Forced marriage is distinct from other trafficking in persons, slavery and slavery-like offences, including because of the age and vulnerability of the victims and survivors and their relationship to the perpetrators. For example, it is common in forced marriage cases for perpetrators to be family members of the victim and survivor. Victims and survivors may be reluctant to pursue a criminal justice process that may result in family members being incarcerated. Victims and survivors are also often young women, with limited experience living independently from their families.

The Government places a strong emphasis on efforts to prevent and disrupt forced marriages from taking place. The Government is also developing enhanced civil protections and remedies for victims and survivors of forced marriage to provide additional options for victims and survivors to seek support and protection.

Case Example

A 17-year-old girl entered into a secret relationship with a boy from outside of her community. When her parents discover the relationship, they are upset and tell the girl that she has dishonoured her family and forbids her from seeing the boy again. Shortly afterwards, the girl's parents tell her they have chosen a different young man for her to marry and she is told that if she refuses the marriage, she will be disowned from her family. The girl does not want to get married but does not feel she has a choice

One element of Australia's forced marriage offence involves *causing* another person to enter into a forced marriage. Cause and causation in Australia's forced marriage offences are not defined, though have a common law interpretation, being conduct which contributes significantly or substantially to the result.

Forced marriage victims and survivors often experience subtle forms of coercion in a pattern of behaviour over time. There may be challenges establishing a causal link where the conduct could be said to have significantly or substantially contributed to the forced marriage.

As raised in discussion about the definition of coercion at section 270.1A, coercion is being considered by the Government in the family and domestic violence context. The Australian Government and state and territory governments are working together to develop a common understanding of coercive control and its impacts and this work may help inform and

strengthen understanding about how coercion takes place in forced marriage contexts.

Question 18: Does the forced marriage offence, as it is currently phrased, adequately capture conduct that leads to a forced marriage taking place, including coercion that occurs as a pattern of behaviour over time? If not, why not, and are specific solutions recommended?

Another feature of Australia's forced marriage definition is that it makes clear that a person under the age of 16 cannot consent to be married in any circumstance. However, there are a significant number of identified cases in Australia that involve children between the age of 16 and 18. For example, between 1 July 2017 and 31 June 2022, approximately 23% of reports to the AFP of forced marriage related to persons that were between the age of 16 and 18 at the time of the report. This age group is still highly vulnerable and have less protection under Australia's forced marriage laws because there is no presumption that a child in this age range cannot consent to be married. However, it is worth noting that offending against forced marriage offences involving a victim and survivor under the age of 18 may be prosecuted as an aggravated offence and attract the maximum penalty of nine years' imprisonment.

Question 19: Should Australia's forced marriage offences in the Criminal Code contain stronger protections for children between the age of 16 and 18? If so, how could this be achieved?

Australia's forced marriage offence applies a definition of marriage at 270.7A(2). This definition includes:

- marriages (including those recognised under a law of a foreign country)
- registered relationships (including those registered under a law of a foreign country), and
- marriages that are void, invalid or not recognised by law for any reason including where a party to the marriage has not freely or fully consented to the marriage and where a party to the marriage is married to more than one person.

This definition is intended to capture all forms of marriage, including cultural and religious ceremonies.

In practice, there are significant difficulties gathering evidence that demonstrates that a marriage has taken place, in line with the definition of marriage at subsection 270.7A(2). This is particularly the case where marriages have taken place offshore and evidence of that marriage (like a form of marriage registration or certificate) is not available. There are also challenges applying Australia's forced marriage laws to cultural or religious ceremonies that are not technically a marriage, but that bind two people together as in marriage, and until a formal marriage ceremony can take place.

Question 20: Does the definition of marriage in subsection 270.7A(2) adequately apply to the types of forced marriages that are being observed by Australian law enforcement agencies and other stakeholders? If not, why not, and what changes or solutions are recommended?

Debt bondage

Australia's debt bondage offence is at section 270.7C of the Criminal Code. Debt bondage is defined as the condition of a victim and survivor arising from a pledge by the victim and survivor of their own personal services or of the personal service of another person under the victim's control; or by another person with control over the victim and survivor for personal services of the victim and survivor. The pledge must be made as security for a debt owed, or claimed to be owed by the person making the pledge. This includes both debt incurred and debt claimed to be incurred after the pledge is given. One of the following must also apply:

- the debt owed or claimed to be owed is manifestly excessive
- the reasonable value of those services is not applied toward the liquidation of the debt or purported debt, or
- the length and nature of those services are not respectively limited and defined.

This definition was inserted into the Criminal Code in 2018 and expanded the former definition of debt bondage to include the condition of a person whose personal services are pledged by another person, as security for another person's debt. The maximum penalty for an offence of debt bondage is four years' imprisonment and seven for an aggravated offence.

There have been no convictions against this offence. However, this offence forms part of a tiered suite of offences that address serious forms of exploitation and provides an investigation and prosecution option where the more serious offences cannot be made out.

Question 21: Does the debt bondage offence continue to be fit-for-purpose and provide an appropriate investigation and prosecution option where more serious labour exploitation offences cannot be made out?

Case Example

A woman accepts a job working on a farm overseas. Her employer tells her that the expenses for her flights and her recruitment will be deducted from her wages. When the woman arrives, her employer inflates the size of her debt and seizes her passport. After four months of working, the woman has not received her wages. When she asks her employer about this, she is told that she is not being paid because she is still repaying the interest on the debt from her recruitment and travel.

Division 270 – Aggravated offences

Section 270.8 contains the conditions at which an offence in Division 270 is an aggravated offence. It specifies that an aggravated offence applies when:

- the victim and survivor is under 18 years old
- the offender subjects the victim and survivor to cruel, inhuman or degrading treatment, and/or
- where the offender engages in conduct that gives rise to a danger of death or serious harm to the victim and survivor or another person and is reckless to that danger.

Question 22: Are the range of factors that give rise to an aggravated offence at section 270.8 appropriate and do they reflect the type of circumstances that should give rise to higher penalties against offences at Division 270?

Division 270 – Alternative verdicts

Division 270 includes particular statutory provisions that allow for the returning of alternative verdicts if a defendant is found not guilty of particular offences. For example, subsection 270.5(4) provides that an alternative verdict of forced labour can be made if a defendant is found not-guilty of a servitude offence, provided the defendant has been afforded procedural fairness. Similarly, subsection 270.8(3) provides that if a defendant is found not guilty for an aggravated offence, they may be found guilty of the corresponding slavery-like offence, provided the defendant has been afforded procedural fairness.

Alternative verdicts are provided in Division 270 where the linked offences are substantially similar so that the same sets of alleged facts are relevant to a finding of guilt for both offences. For example, the servitude and forced labour offences are the same, with the exception of one additional element required to establish a servitude offence. Similarly, the aggravated offences are the same as their corresponding slavery-like offence, with the exception of an additional aggravating circumstance/s that is required to establish the aggravated offence.

Question 23: Are the alternative verdict provisions operating effectively in practice and supporting investigation and prosecution outcomes? Do stakeholders have recommendations to strengthen the availability and operation of alternative verdicts in Division 270?

Relevant evidence

Section 270.10 sets out relevant evidence that a trier of fact may have regard to when determining whether:

- For slavery-like offences, whether the alleged victim and survivor has been coerced, threatened or deceived
- For the offence of servitude, whether the alleged victim and survivor was significantly deprived of personal freedom
- For the offence of forced marriage, whether the alleged victim and survivor was incapable of understanding the nature and effect of a marriage ceremony; or
- For the offence of debt bondage, whether another person has caused the alleged victim and survivor to enter into debt bondage.

The relevant evidence specified in this section includes:

- the economic relationship between the alleged victim and survivor, the alleged offender or a family member of the alleged victim or alleged offender, and any other person
- the terms of any written or oral contract or agreement between the alleged victim and survivor, the alleged offender or a family member of the alleged victim and survivor or alleged offender, and any other person
- the personal circumstances of the alleged victim and survivor, including but not limited to:

- whether the victim and survivor is entitled to be in Australia under the Migration Act; and
- the victim and survivor's ability to speak, write and understand English or another language; and
- the extent of the victim and survivor's social and physical dependence on the alleged offender or any other person.

The relevant evidence listed at 271.10(2) does not prevent or exclude the leading of any other relevant evidence or limit the manner in which evidence may be given or the admissibility of evidence.

Question 24: Is the list of factors that may be considered by a trier of fact in section 270.10 sufficient, or are there other circumstances that should be considered?

Division 271 – Trafficking in Persons

Australia's trafficking in persons offences are located at Division 271 of the Criminal Code. Division 271 includes:

- Section 271.2 – offence of trafficking in persons
- Section 271.3 – offence of trafficking in persons – aggravated offence
- Section 271.4 – offence of trafficking in children
- Section 271.5 – offence of domestic trafficking in persons
- Section 271.6 – offence of domestic trafficking in persons – aggravated offence
- Section 271.7 – offence of domestic trafficking in children

Subdivisions 271-BA and BB, which contain offences for organ trafficking and harbouring a victim are discussed separately.

Trafficking in persons

The international framework that guides domestic responses to trafficking in persons is set out in the Trafficking Protocol. Article 3 of the Trafficking Protocol defines trafficking in persons as:

The recruitment, transportation, transfer, harbouring or receipt of a person by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The Trafficking Protocol definition provides three elements that combine to form a trafficking in persons offence. These are:

- **The act** – being the recruitment, transportation, transfer, harbouring or receipt of a person
- **The means** through which the act is accomplished – being the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, and
- **The purpose** of the act– which must be exploitation and include at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The act, means and purpose of Australia's trafficking in persons offences

The act

The Trafficking Protocol lists five examples of a physical act that form part of a trafficking in persons offence. UNODC's 2020 Legislative Guide for the Trafficking Protocol²² specifies that these terms are intended to be alternatives to one another and that the incorporation of trafficking in persons offences into domestic legislation does not require all five terms to be explicitly included.

UNODC's legislative guidance further suggests that the natural meaning of these terms provides for a broad range of physical actions to be relevant to a trafficking in persons offence – including actions that occur online. The below excerpt from the UNODC Legislative Guide further expands on this:

*“**recruitment**” refers to the act of drawing a person into a process and can involve a multitude of methods, including orally, through advertisements, or online through the internet...*

*“**transportation**” would cover the act by a carrier by land, sea, or air by any means or kinds of transportation. Transportation may occur over short or long distances, within one country or across national borders.*

*“**Transfer**” too can refer to transportation of a person but can also mean the handing over of effective control over a person to another. This is particularly important in certain cultural environments where control over individuals (mostly family members) may be transferred to other people.*

*“**Harbouring**” may be understood differently in different jurisdictions and may refer, for instance, to accommodating a person at the point of departure, transit, or destination...or it may refer to steps taken to conceal a person's whereabouts...[or] holding a person.*

*“**Receipt**”...is the correlative of “transfer” and may refer to the arrival of the person, the meeting of a person at an agreed place, or the gaining of control over a person. It can also include receiving persons into employment or for the purposes of employment, including forced labour. Receipt can also apply to situations in which there was no preceding process, such as inter-generational bonded labour or where a working environment changes from acceptable to coercively exploitative.”²³*

Australia's cross-border trafficking offences at section 271.2 (trafficking in persons) and 271.4 (trafficking in children) criminalise organising or facilitating entry or exit or proposed entry or exit, or receipt of a person. These terms, if applied as discussed above, are capable of capturing a broad range of conduct, including conduct that is facilitated or that takes place online and through the use of technology. However, one delimiter to the range of conduct captured by the cross-border trafficking offences is the requirement that the trafficking involves crossing an Australian border. The requirement that a border be crossed also implies that a person must be physically moved for the offence to be made out. It also limits the geographic

²² UNODC, [Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children](#) (Legislative Guide, 2020).

²³ Ibid 30.

reach of the offences, which is discussed further in the subsection below on jurisdiction.

Question 25: Should the cross-border trafficking offences (including trafficking in children) be amended so that they do not require the physical movement of a person? If so, how could this be achieved through amendments to the offences?

Question 26: Does organising or facilitating entry or exit or proposed entry or exit or receipt of a person adequately capture the relevant actions that comprise the ‘act’ in trafficking in persons? If not, why not, and what alternate or additional terms are recommended?

Australia’s domestic trafficking offences are further limited to organising or facilitating transportation or proposed transportation (for the domestic trafficking in persons offence at 271.5 and domestic organ trafficking offence at 271.7D) and to organising or facilitating transportation (for the domestic trafficking in children offence at 271.7). The term ‘receipt’ is not part of the domestic offences. Further, the framing of the domestic offences requires that the transportation takes place ‘from one place in Australia to another place in Australia.’ This framing means that a domestic trafficking in persons offence involves the real or proposed physical movement of a person.

The child trafficking offences have an additional limitation in that ‘proposed transportation’ does not form part of the child trafficking offence and specify that ‘a person commits an offence of domestic trafficking in children if the first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia...’

Question 27: Should the domestic trafficking offences (including trafficking in children) be amended so that they do not require the physical movement of a person? If so, how could this be achieved through amendments to the offences?

Question 28: Should the domestic trafficking offences include the same terms as the cross-border offences so that the same methods are captured? For example, should the term ‘receipt’ form part of Australia’s domestic trafficking offences? Similarly, should the domestic trafficking in children offence mirror the domestic trafficking in persons offence and include ‘proposed transportation’?

The means

The second element of trafficking in persons is the means by which perpetrators accomplish the physical act. The Trafficking Protocol includes the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. UNODC 2020 legislative guidance notes that countries may include other and/or additional means in domestic legislation, and can recognise new forms of coercion over time.²⁴

For the purpose of Division 271, Australia uses the terms ‘coercion, threat or deception’ to describe the means. These terms are defined in Division 270 to include a range of physical and non-physical elements and that are intended to capture a broad range of circumstances,

²⁴ Ibid.

including where the coercion is subtle. Together, Australia's definitions for coercion, threat and deception include:

- Coercion through
 - Force
 - Duress
 - Detention
 - Psychological oppression
 - Abuse of power
 - Taking advantage of a person's vulnerability
- A threat of coercion
- A threat to cause a person's deportation or removal from Australia
- A threat of any other detrimental action, unless there are reasonable grounds for the threat of that action in connection with the provision of labour or services by a person, and
- Deception

Question 29: Do the definitions of coercion, threat and deception collectively capture the conduct used by traffickers to achieve the physical elements of a trafficking in persons offence?

The purpose

The purpose of a trafficking in persons offence is exploitation. The Trafficking Protocol requires that exploitation include at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Case Example

A perpetrator organised a woman (the victim and survivor) to travel to Australia for work. On arrival, the woman was met by the perpetrator. The victim and survivor thought she was staying with the perpetrator but was informed that she was being taken to 'the shop' which was in fact a brothel. Once inside, the perpetrator told the victim and survivor she owed a debt for immigration, flights and transport fees and she would have to do sex work in order to pay this money back. The perpetrator then demanded the victim and survivor's passport and took it from her.

Section 271.1A of the Criminal Code defines exploitation to include slavery or a condition similar to slavery, servitude, forced labour, forced marriage, and debt bondage. This definition is intended to be comprehensive and capture exploitation in all contexts and all industries. However, there may be some contemporary manifestations of exploitation that fall outside Australia's current definition that are worth consideration in further detail. This has been raised in the section on 'core definitions and concepts' in the discussion of 'exploitation' and is further discussed in the section on orphanage below.

Aggravated offence

Section 271.3 sets out an aggravated trafficking in persons offence that applies when the offender intends the victim and survivor to be exploited, subjects the victim and survivor to cruel, inhuman or degrading treatment or engages in conduct reckless as to the danger of the victim and survivor dying or being seriously harmed. An aggravated offence carries a maximum penalty of up to 20 years' imprisonment. Unlike in Division 270, age is not an aggravating factor because Division 271 contains separate offences for trafficking in children and domestic trafficking in children, which carry higher maximum penalties of up to 25 years' imprisonment.

Question 30: Are the factors that establish an aggravated offence in section 271.3 appropriate and do they reflect the type of aggravating circumstances that should give rise to higher penalties?

Trafficking in children

Section 271.4 and 271.7 contains offences for trafficking in children, and criminalises both cross-border trafficking (into and out from Australia) and domestic trafficking, with maximum penalties of up to 25 years' imprisonment.

The trafficking in children offences are distinct from the offences that involve adult victims and survivors because there is no element requiring a child to be coerced, threatened or deceived. This is consistent with the Trafficking Protocol, which states 'the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means.' Also consistent with the Trafficking Protocol, a trafficking in children offence applies where the victim and survivor is under the age of 18.

The framing of Australia's child trafficking offences (both cross-border and domestic) includes the terminology 'sexual services'. For example, subsection 271.4(1) sets out an offence where an offender organises or facilitates the entry or proposed entry into Australia, or receipt in Australia, of a person under the age of 18 intending, or is reckless as to whether, the person will be used to provide sexual services or will be otherwise exploited.

The term 'sexual services' may have a commercial connotation that may be considered inappropriate, particularly in the context of child sexual exploitation and abuse. This term may also not be the most appropriate victim and survivor-centred language.

The Revised Explanatory Memorandum supporting the introduction of Australia's child trafficking offences states that the definition of sexual services:

'is defined broadly to include the use or display of the body of the person providing the sexual service for the sexual gratification of others. It is not limited to the commercial use or display of the body of the person. For example, this definition would include the use of the body of a child to make pornography for the perpetrator's personal use or sharing with friends, without payment or reward and regardless of whether it occurs in

*a commercial context or not. Trafficking conduct that involves the use of a child for any type of sexual service warrants criminal sanction and should be captured by the Bill.*²⁵

Given this definition of sexual services, it will be important that any suggested revised terminology for the child trafficking offences can capture trafficking of children for sexual exploitation and abuse, whether or not it occurs in a commercial context.

Another question is whether the phrasing of the child trafficking offence that specifies an offence where ‘the person will be used to provide sexual services or will otherwise be exploited’ is sufficiently broad to capture the forms and drivers of child trafficking. The Explanatory Memorandum²⁶ for the child trafficking offences specifies that the phrase ‘and will be otherwise exploited’ uses the definition of exploitation (now at section 271.1A). This means that the forms of exploitation covered by this phrase includes slavery or a condition similar to slavery, servitude, forced labour, forced marriage and debt bondage.

Question 31: Is the term ‘sexual services’ appropriate in the context of Australia’s child trafficking offences? If not, are alternate terms suggested? If the term is not appropriate in the context of child trafficking, is it appropriate in the context of trafficking involving adult victims and survivors? What might the unintended consequences be if the term was changed, noting it is used throughout offences in Division 271?

Does the phrase ‘provide sexual services or will otherwise be exploited’ adequately capture the forms of exploitation that may be present in, or driving, child trafficking?

Trafficking in children – Orphanage trafficking

The term orphanage trafficking is not defined in international law or in Australia’s domestic law. It is a term used to describe a form of child trafficking, where a child is recruited or transferred into an orphanage or institutional care for the purpose of exploitation.

Orphanage trafficking is increasingly considered an emerging or contemporary manifestation of trafficking in persons. Australia has considered the issue of orphanage trafficking through forums including parliamentary inquiries. Most recently, the inquiry into establishing a Modern Slavery Act in Australia heard concerns from stakeholders about children being trafficked into orphanages and subsequently exploited through ‘voluntourism’ or orphanage tourism. The Committee’s final report from this inquiry noted:

‘The Committee heard consistent evidence that children subject to orphanage tourism are removed from their families and placed in residential institutions to attract funding and donations from foreign tourists. In many cases, parents are wilfully deceived by recruiters who visit poorer rural communities on behalf of orphanage directors to place their children in institutions on the promise of an education and a better life. Once in these institutions, children are often held in slavery-like conditions and/or subject to exploitation and abuse in order to attract donor funding and donations.’²⁷

²⁵ [Revised Explanatory Memorandum](#), Criminal Code Amendment (Trafficking in Persons Offences) Bill 2005 (Cth) 11.

²⁶ Ibid 8.

²⁷ Joint Standing Committee on Foreign Affairs and Trade, Parliament of Australia, [Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia](#) (Report, 2017).

In response to findings from the Committee, the former Government's response tabled 19 October 2021²⁸, noted that Australia's trafficking in persons offences in Division 271 can capture trafficking for a broad range of exploitative conduct, including exploitation in orphanages. However, it also recognised that the trafficking offences could not capture conduct by Australians overseas that does not involve the trafficking of a person into or from Australia and noted that legislative options would be explored to address this.

There is currently limited data on the prevalence of orphanage trafficking being conducted or facilitated by Australians offshore. However, stakeholders have provided accounts of cases involving Australians and described gaps in offences at Divisions 270 and 271 preventing their application to these cases.

One mechanism to strengthen the application of Division 271 to orphanage trafficking may be to consider removing the requirement that trafficking in persons occurs across Australian borders. This would mean that Australia's offences could apply to Australian citizens, residents and bodies corporate that are located offshore and trafficking children within or between foreign jurisdictions and into orphanages and other institutional settings. Alternatively, there has also been literature in Australia proposing an alternate option of establishing a separate and standalone orphanage trafficking offence.²⁹

Question 32: Should the requirement that a person be trafficked across an Australian border be amended so that Australia's trafficking offences can cover conduct by Australian citizens, permanent residents and bodies corporate offshore? Would this adequately address gaps in the application of Australia's trafficking offences to orphanage trafficking?

Another question arising with orphanage trafficking is whether the definition of 'exploitation' (which includes slavery, servitude, forced labour, debt bondage, deceptive recruiting and forced marriage) accurately reflects the type of exploitation that occurs within orphanages or other institutional settings. One gap may be where children are exploited in that their very presence in orphanages and similar institutions provides a financial gain.

This form of exploitation is recognised in the 2021 LUMOS report *Cycles of Exploitation: The Links Between Children's Institutions and Human Trafficking*. This report calls on governments to ensure domestic legislation can adequately apply to cover trafficking of children into orphanages where they are exploited and introduces the term 'financial exploitation' to describe situations where the very presence of a child in an orphanage or similar institutions is used for financial gain.³⁰

Question 33: Does the definition of exploitation sufficiently cover the forms of exploitation that may be experienced by children that are trafficked into orphanages? If not, what forms of

²⁸ Australian Government, [Response to the Parliamentary Joint Standing Committee on Foreign Affairs Defence and Trade inquiry reports: Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia and the Modern Slavery and Global Supply Chains: Interim report of the Joint Standing Committee on Foreign Affairs and Trade's inquiry into establishing a Modern Slavery Act in Australia](#) (Report, 2020).

²⁹ Kate van Doore and Rebecca Nhep (2019) 'Orphanage Trafficking and the Australian Response', *Griffith Journal of Law and Human Dignity* 7(2), 115-138.

³⁰ LUMOS, [Cycles of Exploitation: The Links Between Children's Institutions and Human Trafficking](#) (Report, 2021).

exploitation are taking place and how might these be incorporated into the offences for trafficking in persons or the definition of exploitation?

Organ trafficking

The term organ trafficking is used internationally to describe different types of conduct in different contexts. This targeted review is concerned with conduct that would constitute an offence under sections 271.B –271.E of the Criminal Code. These offences criminalise trafficking in persons for the purpose of organ removal, in line with the Trafficking Protocol.

Organ trafficking has been criminalised in the Criminal Code since 2005. In 2013, the Government strengthened its response by introducing four standalone organ trafficking offences in the Criminal Code:

- Section 271.7B: Offence of organ trafficking – entry into and exit from Australia
- Section 271.7C: Organ trafficking – aggravated offence
- Section 271.7D: Offence of domestic organ trafficking, and
- Section 271.7E: Domestic organ trafficking – aggravated offence.

These offences criminalise trafficking in persons for the purpose of organ removal, including organising or facilitating the entry into, exit from, or transportation within, Australia. Organ transplant tourism is captured by these offences where a person organises or facilitates the transport, or proposed transport, of the donor to, from or within Australia and where that person is reckless as to whether the conduct will result in the removal of an organ of the victim without their consent or without the consent of the victims' guardian and where it would not meet a medical or therapeutic need of the victim.

The offences at Section 271.7B and 271.7C have extended geographical jurisdiction, and apply to conduct that occurs wholly or partly in Australia or has a result in Australia, as well as applying to conduct occurring wholly overseas by Australian citizens. The offences at Section 271D and 271E have standard geographic jurisdiction.

There have been no convictions for the offence of organ trafficking in Australia.

Case Example

A perpetrator in Australia is unwell and in need of an organ transplant. She organises the transportation of another woman (the victim and survivor) from overseas and into Australia with the intention of removing the victim and survivor's organ without her consent.

The framing of Australia's cross-border organ trafficking offences at 271.7B requires the movement of a person across Australia's borders. This may impact the full application of the offences' extended geographic jurisdiction. The extended jurisdiction means that the offences apply to conduct that occurs wholly or partly in Australia or has a result in Australia, as well as applying to conduct occurring wholly overseas by Australian citizens, residents and bodies corporate. However, the current framing of Australia's organ trafficking offences means that conduct occurring wholly overseas by Australian citizens, residents and bodies corporate cannot currently be captured by the offences.

This gap was raised in the Joint Standing Committee on Foreign Affairs, Defence and Trade's (JSCFADT) Inquiry into Human Organ Trafficking and Organ Transplant Tourism.³¹ The previous Government's response to that inquiry acknowledged this gap and signalled it would consider legislative options to strengthen Australia's organ trafficking offences.³² One legislative option may be to amend the framing of Australia's cross-border organ trafficking offences so that they can better capture offshore conduct by Australian citizens, permanent residents and bodies corporate. This change would be consistent with amendments contemplated in this Discussion Paper for the other cross-border trafficking in persons offences in Division 271.

Any change that extends the geographic reach of Australia's offences will require further consideration of the extent to which Australia can legislate with respect to extraterritorial conduct.

Question 34: Should Australia's organ trafficking offences be amended to remove the cross-border element to capture offshore conduct by Australian citizens, permanent residents and bodies corporate? What might the consequences (including unintended) be?

Organ transplant tourism

The term 'organ transplant tourism' is not defined in Australian law, but has been used in Australia to refer to a prospective organ recipient voluntarily travelling to a foreign country for the purpose of undergoing organ transplantation.³³ The organ may be acquired through legal, illegal or unethical means, including without the full and free consent of the donor.

Under the Criminal Code, organ transplant tourism would constitute an organ trafficking offence if a person organised or facilitated the transport, or proposed transport, of the donor to, from or within Australia.

The previous government considered Australia's approach to organ transplant tourism in its response to the JSCFADT organ trafficking inquiry and noted:

'Australia's states and territories have robust frameworks to regulate the lawful donation and transplantation of organs and tissue for therapeutic purposes. All Australian states and territories have legislated against the sale of organs, regardless of whether an individual has provided consent. These frameworks prohibit any financial trade, or practice whereby an organ or tissue is treated as a commodity. Similarly, all states and territories have legislated against the removal of organs without full and free consent. There is no consent if the victim or their guardian has been coerced or induced, monetarily or otherwise, into agreeing to the removal of the victim's organ. Depending on the factual circumstances of each case, state and territory offences may apply to organs sourced overseas'.³⁴

Amending the organ trafficking offences as discussed to remove the cross-border element may further strengthen Australia's approach to organ transplant tourism by ensuring

³¹ Joint Standing Committee on Foreign Affairs and Trade, Parliament of Australia, [*Compassion not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism*](#) (Report, 2018).

³² Australian Government, [*Response to the Joint Standing Committee on Foreign Affairs, Defence and Trade report: Compassion, not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism*](#) (Report, 2021).

³³ Ibid.

³⁴ Ibid 4.

Australia's organ trafficking offences can apply offshore conduct by Australian citizens, permanent residents or Australian bodies corporate.

Question 35: If Australia's organ trafficking offences were amended to remove the cross-border element (as contemplated in the previous discussion question), would this strengthen the Commonwealth's response to situations where an Australian citizen, permanent resident or Australian body corporate may exploit an individual outside of Australia for the purposes of organ removal and transplantation?

Harbouring a victim

Sections 271.7F criminalises harbouring a victim. A person commits an offence of harbouring a victim if they harbour, receive or conceal another person, and this assists a third person, or furthers a third person's purpose, in connection with any offence committed by the third person against Division 270 or 271. Where the victim is under the age of 18, a separate aggravated offence at section 271.7G may apply.

There have been no convictions against Australia's harbouring offence.

Question 36: Is Australia's harbouring offence fit for purpose? If not, why not and are specific changes recommended?

Case Example

A victim and survivor is brought from overseas to Australia and is accompanied by minders during transit. The victim and survivor is then transported by minders to accommodation. Each day, the minders transport the victim and survivor to and from a brothel where the victim and survivor is forced to provide sexual services.

Australia's suite of offences

Australia's trafficking offences are comprehensive and establish a suite of offences that provide coverage for broad conduct that includes:

- Trafficking across Australian borders and trafficking within Australian borders
- Offences that cover both organising and facilitatory conduct
- Offences that cover trafficking whether or not it results in the exploitation of the victim and survivor, including where the offender is reckless as to whether the victim and survivor will be exploited
- Offences that feature the coercion, threat or deception at different points of the offending. For example, where coercion, threat or deception is used as part of organising or facilitating the entry, exit or transportation of person, and separately where deception is used to deceive a person about the fact that their entry or exist will involve the provision of sexual services or exploitation or the confiscation of their travel or identity documents
- Offences where a person might consent to provide sexual services but are deceived about factors and circumstances connected to the provision of sexual services

- Separate offences for trafficking in children where coercion, threat and deception are not part of the offences
- Separate offences of trafficking in persons for the purpose of organ removal.

While Australia's trafficking in persons offences are comprehensive, they are also complex.

Question 37: Are the full range of separate trafficking offences helpful to law enforcement agencies? Do the number or range of offences cause challenges or complications with investigations and prosecutions?

Jurisdiction

Cross-border offences

Australia's trafficking in persons offences that involve cross-border trafficking have extended geographical jurisdiction (category B) that covers:

- conduct that occurs wholly or partly in Australia
- conduct that occurs outside Australia by an Australian citizen, Australian resident or a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory, or
- conduct that has a result in Australia.

However, the full realisation of the extended geographic jurisdiction is currently limited by the expression of Australia's trafficking offences, which require the organisation or facilitation of the entry or proposed entry, exit or proposed exit, or receipt of a person into, or out of, Australia. This means that an Australian citizen, resident or body corporate that is located offshore and trafficking people within or between foreign jurisdictions cannot be captured by Australia's trafficking offences.

Any change that extends the geographic reach of Australia's offences will require further consideration of the extent to which Australia can legislate with respect to extraterritorial conduct.

Question 38: Is it desirable to explore amending the requirement that a person be trafficked across an Australian border so that Australia's trafficking offences can cover offshore conduct perpetrated by Australian citizens, permanent residents and Australian bodies corporate? What might the consequences (including unintended) of this change be?

Jurisdiction – domestic offences

Section 271.11 outlines the jurisdiction requirements of the domestic trafficking in persons offences, including domestic trafficking in children and domestic trafficking in organs.

It specifies that a person only commits an offence where one or more of the following apply:

- the conduct constituting the offence occurs to any extent outside Australia;
- the conduct constituting the offence involves transportation across State borders, either for reward or in connection with a commercial arrangement;

- the conduct constituting the offence occurs within a Territory or involves transportation to or from a Territory;
- the conduct constituting the offence is engaged in/by, or on behalf of, a constitutional corporation, or in circumstances where the victims of the trafficking conduct were intended to be employed by a constitutional corporation;
- some of the conduct constituting the offence is engaged in/by communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(v) of the Constitution; (f) the victim of the conduct constituting the offence is an alien for the purposes of paragraph 51(xix) of the Constitution

This section of Division 271 was enabled to ensure the constitutional validity of the domestic trafficking offences. This is outlined in the Explanatory Memorandum, which states:

‘The Commonwealth’s power to legislate in relation to domestic trafficking is limited by section 51 of the Constitution. Accordingly, the list of circumstances set out in [s 271.11] reflects the Australian Government’s constitutional power to implement offences that target trafficking in persons activity within Australia.’³⁵

Question 40: Are the jurisdictional requirements of Australia’s domestic trafficking in persons offences appropriate? If not, why not and what changes or solutions are recommended?

³⁵ Australian Government (n 18) 12.

Penalties and extension of criminal liability

Penalties

The UNODC's International Framework for Action to Implement the Trafficking in Persons Protocol recommends that countries 'ensure that penalties and sanctions are appropriate and proportionate to the gravity of the crime'.³⁶ Trafficking in persons, slavery and slavery-like offences are serious crimes that carry severe penalties in Australia. Appendix C contains a summary of offences and penalties for Divisions 270 and 271.

The Australian Government's Guide to Framing Commonwealth Offences provides that when determining penalties, 'each offence should have its own single maximum penalty that is adequate to deter and punish a worst-case offence'.³⁷ A maximum penalty should aim to effectively deter the public from committing the offence and should reflect the seriousness of the offence. Where there are compelling motives to commit the offence or where the consequences of committing the offence are particularly unsafe or harmful, a higher maximum penalty will be justified. A penalty should also be compatible with penalties for existing similar offences.

Question 40: Do the penalties contained in Divisions 270 and 271 appropriately reflect the seriousness of the offences? If not, why not?

Extension of criminal liability

Division 11 of the Criminal Code sets out extensions of criminal responsibility, which is summarised below.

- s 11.1 – Attempt. An attempt to commit an offence is punishable to the same extent as the principal offence. Neither success nor impossibility of success is a barrier to conviction for attempt.
- s 11.2 - Complicity and common purpose. Liability as an accomplice is derivative in the sense that it depends on proof that another person or persons combined with the defendant to commit the offence.
- s 11.3 - Innocent agency. The principle of innocent agency permits conviction of an offender who uses another as their instrument to commit an offence.
- s 11.4 – Incitement. Incitement, like attempt and conspiracy, is a separate and distinct offence from the offence which is the subject of incitement. Attempt, incitement and conspiracy can overlap in their applications to criminal conduct.
- s 11.5 – Conspiracy. Conspiracy, like incitement and attempt is an offence distinct from the principal offence, which is the subject of the conspiracy. Unlike incitement and attempt, liability for conspiracy requires proof that the intention was shared, by at least one other person.³⁸

³⁶ UNODC, [International Framework for Action to Implement the Trafficking in Persons Protocol](#) (Report, 2009).

³⁷ Australian Government, [Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#) (2011) 37.

³⁸ The Attorney-General's Department, [The Commonwealth Criminal Code: A Guide for Practitioners](#) (2002).

Divisions 270 and 271

There are also several ways in which Divisions 270 and 271 extend criminal liability. For example, subsections 271.2(1B) and (1C) create offences of trafficking in persons for organising or facilitating entry or proposed entry or receipt, or exit or proposed exit of another person into or from Australia, and are reckless as to whether the other person will be exploited. This creates offences for organisation or facilitation, even if the entry or exit, or exploitation do not take place.

Challenges with victim and survivor testimony

The AIC's report on attrition of human trafficking and slavery cases through the Australian criminal justice system ³⁹ cites challenges that underpin investigations and prosecutions globally. A key challenge includes reliance on victim and survivor testimony.

Australian law provides protections for vulnerable witnesses giving evidence in Commonwealth criminal proceedings, including victims and survivors of trafficking in persons and slavery-related offences. The *Crimes Act 1914* (Cth) (the Crimes Act) enables victims and survivors to give evidence by closed-circuit television, video-link or video-recording, have their contact with the defendant or members of the public limited, and have a support person with them while they give evidence. The Crimes Act also makes it an offence to publish material identifying a trafficked person, and allows trafficked people to make victim impact statements to the court outlining the harm they have experienced.

Despite these protections, there may be some aspects of offences at Divisions 270 and 271 that can be considered through the lens of reducing reliance on victim and survivor testimony. This may include considering the framing of certain offences and whether there are opportunities to consider how these can be constructed to reduce reliance on victim and survivor testimony. Another option may be to consider additional offences, where appropriate, with less emphasis on victim and survivor testimony.

Question 41: Do stakeholders have recommendations about how Divisions 270 and 271 can take a victim and survivor-centred approach and reduce reliance on victim and survivor testimony while maintaining the core elements of the offences that align with international law and standards?

Defences for victim-survivors

JSCFADT's report *Hidden in Plain Sight* recommended the introduction of defences for victims of modern slavery offences who are compelled to commit a crime due to exploitation, including a pathway for appeal and/or expungement of criminal convictions for victims of modern slavery who have legitimate defences, together with sentencing guidance (recommendation 22). ⁴⁰

There is currently no specific provision in Australian legislation for the treatment of trafficked persons that have engaged in criminal activity, and no other crime types in Australia have specific defences in the Criminal Code for victims who engage in criminal activity as a result of a crime being committed against them.

The Criminal Code includes a number of general defences. This includes the defence of duress at section 10.2 of the Criminal Code, which provides that a person is not criminally responsible for a Commonwealth offence if he or she carries out the conduct constituting the offence under duress. A person carries out conduct under duress only if the person reasonably believes:

- a threat has been made that will be carried out unless an offence is committed; and
- there is no reasonable way that the threat can be rendered ineffective; and
- the conduct is a reasonable response to the threat.

³⁹ Lyneham (n 3).

⁴⁰ Joint Standing Committee on Foreign Affairs and Trade (n 27).

Other general defences may be available where the conduct constituting the offence is in response to a sudden or extraordinary emergency (section 10.3 of the Criminal Code), or where the conduct constituting the offence is in self-defence (section 10.4 of the Criminal Code).

Non-punishment principle

The non-punishment principle has emerged in international guidance and commentary on responses to trafficking in persons.⁴¹ However, the principle is not explicitly contained within the UNTOC or the Trafficking Protocol.

The non-punishment principle recognises that victims and survivors should not be punished for conduct that they commit as a direct result of their being a victim and survivor.⁴² The principle is not intended to provide immunity to victims and survivors, but instead recognises that criminal liability should be based on voluntary conduct.

UNODC's 2020 legislative guidance notes that the Working Group on Trafficking in Persons of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime views the non-punishment principle as an extension of State Party obligations in Article 2 of the Trafficking Protocol, which calls on States to 'protect and assist the victims of such trafficking, with full respect for their human rights'.⁴³

The Committee on the Elimination of Discrimination against Women has similarly called on States to implement the non-punishment principle in legislation to assist with identifying victims and survivors of trafficking (General Recommendation No. 38).⁴⁴

The ASEAN Convention Against Trafficking In Persons, Especially Women and Children⁴⁵ - signed by all ASEAN Member States –states that victims of trafficking should not be punished for unlawful acts committed because of being trafficked. The Australia-ASEAN Counter Trafficking Program (ASEAN-ACT) has supported a study that considers how the non-punishment principle is reflected in laws, policies and practice and discusses some of the barriers to implementing the principle.⁴⁶ The study highlights a range of approaches in ASEAN countries, including

- that in most ASEAN States, the principle only applies to set a range of offences (for example immigration offences)
- In Thailand, written permission must be sought from the Minister of Justice to prosecute a victim and survivor for a specified list of offences
- In some States the principle is not limited to specified offences.⁴⁷

⁴¹ See for example the Inter-Agency Coordination Group against Trafficking of Persons (ICAT), ['Non-Punishment of Victims of Trafficking'](#), Issue Brief 8 (Report, 2021).

⁴² UNODC (n 22).

⁴³ Ibid 49.

⁴⁴ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 38 on trafficking in women and girls in the context of global migration*, UN Doc. CEDAW/C/GC/38 (20 November 2020) 98.

⁴⁵ [The ASEAN Convention Against Trafficking in Persons, Especially Women and Children](#) (signed on 21 November 2015 and entered into force 8 March 2017).

⁴⁶ Marika McAdam, [Implementation of the Non-Punishment Principle for Victims of Human Trafficking in ASEAN Member States](#) (ASEAN-Australia Counter Trafficking, 2022).

⁴⁷ Ibid 4-5.

Complementary measures can include provisions allowing for victims and survivors to clear their criminal records in certain circumstances.⁴⁸

Approaches to the non-punishment principle range from compulsion models, where a victim and survivor is directly compelled to participate in the criminal conduct, to causation models that require that conduct to be a direct consequence of the trafficking.⁴⁹

Stakeholders in Australia have raised the non-punishment principle as an important principle for consideration in Divisions 270 and 271 to better support and protect victims and survivors and to aid victim and survivor identification by mitigating fear of experiencing negative consequences (in some circumstances) in coming forward to authorities.

To date, there has not been a current or previous government commitment to implement the non-punishment principle in law through a new legislative defence for victims and survivors. However, in practice, the AFP and CDPP give effect to the principle of non-punishment of victims and survivors, including through the Prosecution Policy of the Commonwealth which requires close consideration of the interests of the victim and survivor and that prosecutions are to be in the public interest.

Further, the *National Action Plan to Combat Modern Slavery 2020–25* includes an initiative to undertake a targeted review of support, and legislative protections, defences and remedies available to victims and survivors. This initiative provides further opportunity to consider the defences available to victims and survivors of modern slavery.

Question 42: Do the general defences in the Criminal Code (including duress) sufficiently capture the contexts in which a victim and survivor may commit an offence in connection to their experience of trafficking in persons, slavery or slavery-like practices? If not, why not, and what are the deficiencies? What form might additional protections for victims and survivors take?

⁴⁸ McAdam (n 46).

⁴⁹ Ibid.

APPENDIX A – Terms of Reference

Targeted Review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)

Overview

Strong criminal justice responses are an integral part of combating modern slavery in Australia to ensure our justice framework supports effective disruption, investigation and prosecution actions.

The Australian Government will undertake a targeted review of Australia's modern slavery offences in Divisions 270 and 271 of the *Commonwealth Criminal Code Act 1995* (the Criminal Code).

This initiative contributes to delivering Australia's *National Action Plan to Combat Modern Slavery 2020-25*.

Context

In Australia, modern slavery refers to a range of serious exploitative practices including trafficking in persons, slavery and slavery-like practices such as deceptive recruiting, debt bondage, forced labour and forced marriage. Modern slavery occurs in every country and across all sectors and segments of society, and Australia is not immune.

Australia has comprehensively criminalised modern slavery practices in Divisions 270 and 271 of the Commonwealth Criminal Code and our offences reflect Australia's obligations under international law. The first offences under Divisions 270 and 271 were established in 1999 and 2005 respectively. Since the introduction of offences, a range of legislative reforms have taken place to strengthen Divisions 270 and 271. Australia remains committed to continuing to look closely at its legislative framework and ensuring it continues to support Australia's strong stance against modern slavery.

Global contexts have developed since the introduction of offences in Divisions 270 and 271. Our understanding of modern slavery, and the many forms it can take, continues to mature. Technology has also changed how modern slavery is perpetrated and how it is detected, disrupted and investigated. It is important to consider how these developments impact the operation of Divisions 270 and 271 to ensure they remain fit for purpose, now and into the future.

The review is not intended to consider all aspects of Divisions 270 and 271. It will be targeted in nature and focus on core questions and issues with Australia's legislative framework, including those already raised through parliamentary inquiries on Australia's modern slavery response.

Objectives

The targeted review will report to Government on the following:

- the number of referrals, investigations and prosecutions under Divisions 270 and 271 of the Criminal Code
- investigation challenges connected to offences under Divisions 270 and 271 of the Criminal Code
- prosecution challenges connected to offences under Divisions 270 and 271 of the Criminal Code
- the types and range of offences in Divisions 270 and 271 of the Criminal Code
- framing of offences in Divisions 270 and 271 of the Criminal Code including elements of the offences, definitions, scope, extensions of criminal liability (including attempt), and jurisdiction
- alignment of Divisions 270 and 271 with international laws, standards and best-practice
- appropriateness of penalties in Divisions 270 and 271 of the Criminal Code

- applicability of Divisions 270 and 271 to contemporary manifestations of modern slavery and to current and projected criminal methodologies, and
- interactions between Divisions 270 and 271 and other laws and frameworks where those interactions have impeded, or have the potential to impede, effective investigations and prosecutions under Divisions 270 and 271.

Scope

The targeted review will draw on a range of sources, including gathering information and data from existing reports, papers and research, and conducting a nation-wide consultation process. It will consider and have regard to:

- Reports from parliamentary inquiries on modern slavery matters including:
 - the Parliamentary Joint Committee on Law Enforcement inquiry *An Inquiry into Human Trafficking, Slavery and Slavery-like Practices*
 - the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) inquiry *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia*, and
 - the JSCFADT inquiry *Compassion Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism*.
- Feedback from consultations, including:
 - a public consultation process that invites submissions in response to a Discussion Paper linked to the objectives of the Review, and
 - discussions with stakeholders on specific issues.
- Statistics and data on referrals, investigations and prosecutions conducted to date for offences in Divisions 270 and 271 of the Criminal Code.

Reviewer

The targeted review will be conducted by the Australian Attorney-General's Department in collaboration with the Australian Federal Police, and the Commonwealth Director of Public Prosecutions.

Timing

A Review Paper containing findings from the Review will be provided to the Government by June 2023.

The Review Paper will be made public after government consideration, and in accordance with the term of the National Action Plan.

APPENDIX B – Convictions

Convictions by Criminal Code provision from 2004 to 30 June 2022

Convictions by Criminal Code provision	270.3(1) Slavery	270.5 (1) Servitude	Previously 270.6(2) Sexual servitude*	270.6A(1) Forced labour	270.6A(2) Forced labour	271.2(1A) Trafficking in persons	271.2 (1B) Trafficking in persons	271.2 (2B) Trafficking in persons	271.2(2) Trafficking in persons	271.4(1) Trafficking in children	271.7 Trafficking in children (domestic)
DOBIE, Keith											
DS											
HO, Ho Kam											
HO, Kam Tin											
K											
KOVACS, Melita											
KOVACS, Zoltan											
LEECH, Sarisa											
McIVOR, Trevor											
NANTAHKHUM, Watcharaporn											
NETTHIP, Namthip											
SEIDERS, Johan											
TANG, Wei											
TANUCHIT, Kanokporn											
TRIVEDI, Divye											
WONG, Chee Mei											
YOTCHOMCHIN (KENT), Somsri											
McINTOSH (a pseudonym)											
HUANG, Yu-Hao											
CHEN, Bo-Syun											
KHOO, Lay Foon											
PULINI, Malavine											
PULINI, Isikeli Feleatoua											
KANBUT, Rungnapha*											
SHAIK, Farok											
GREY, Bradley Lester**											
LOHAN, Pardeep											
MCALFEER, Sheila											
MCALFEER, Joshua											
KANNAN, Kumuthini***											
KANNAN, Kandasamy****											

Note:

- * This offender has lodged an appeal against conviction and sentence in this matter.
- ** This offender was convicted in the 2019-2020 reporting period but not reported, and also has additional charges in progress.
- *** This offender has lodged an appeal against conviction and sentence and also has additional charges in progress.
- **** This offender has lodged an appeal against conviction and sentence.

APPENDIX C – Summary of offences and penalties

Extract from National Action Plan to Combat Modern Slavery 2020-25

Offence	Section	Elements	Maximum penalty
Slavery	270.3(1)	Intentionally reduce a person to slavery, ⁵⁰ possess or exercise rights of ownership over a slave, engage in slave trading, ⁵¹ enter into a commercial transaction involving a slave, or exercise control or direction over, or provide finance for, slave trading or a commercial transaction involving a slave	25 years
	270.3(2)	Recklessly enter into a commercial transaction involving a slave, or exercise control or direction over, or provide finance for, slave trading or a commercial transaction involving a slave	17 years
Servitude	270.5(1)	Cause another person to enter into or remain in servitude ⁵²	15 years, or 20 years for an aggravated offence ⁵³
	270.5(2)	Conduct a business ⁵⁴ involving the servitude of another person or persons	15 years, or 20 years for an aggravated offence
Forced Labour	270.6A(1)	Cause another person to enter into or remain in forced labour ⁵⁵	9 years, or 12 years for an aggravated offence

⁵⁰ 'Slavery' is defined in section 270.1 of the *Criminal Code* as the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

⁵¹ 'Slave trading' is defined in subsection 270.3(3) of the *Criminal Code* as including the capture, transport or disposal of a person with the intention of reducing the person to slavery; or the purchase or sale of a slave.

⁵² 'Servitude' is defined in subsection 270.4(1) of the *Criminal Code* as the condition of a person (the victim) who provides labour or services, if, because of the use of coercion, threat or deception: a reasonable person in the position of the victim would not consider himself or herself to be free to cease providing labour or services or to leave the place or area where he or she (the victim) provides labour or services; and the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services.

⁵³ Under subsection 270.8(1) of the *Criminal Code*, a servitude, forced labour, deceptive recruiting or forced marriage offence is aggravated where: the victim is under 18; the offender subjected the victim to cruel, inhuman or degrading treatment; or the offender engaged in conduct that gave rise to a danger of death or serious harm to the victim or another person.

⁵⁴ 'Conducting a business' is defined in section 270.1A of the *Criminal Code* to include taking any part in the management of the business; exercising control or direction over the business; or providing finance for the business.

⁵⁵ 'Forced labour' is defined in subsection 270.6(1) of the *Criminal Code* as the condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free to cease providing labour or services; or to leave the place or area where he or she (the victim) provides labour or services.

	270.6A(2)	Conduct a business involving the forced labour of another person or persons	9 years, or 12 years for an aggravated offence
Deceptive recruitment	270.7	Intentionally induce another person to enter into an engagement to provide labour or services, where the other person is deceived ⁵⁶ about: the extent to which the person will be free to leave, or to cease providing labour or services; the quantum or existence of a debt owed or claimed to be owed; the fact the engagement will involve exploitation or the confiscation of travel or identity documents; or, if the engagement is to involve the provision of sexual services, ⁵⁷ that fact, or the nature of sexual services to be provided	7 years, or 9 years for an aggravated offence
Forced Marriage	270.7B(1)	Cause another person to enter into a forced marriage ⁵⁸	7 years, or 9 years for an aggravated offence
	270.7B(2)	Be a party to a forced marriage, where you are not a victim of the forced marriage	7 years, or 9 years for an aggravated offence
Debt bondage	270.7C	Intentionally cause another person to enter into debt bondage ⁵⁹	4 years, or 7 years for an aggravated offence ⁶⁰

Offence	Section	Elements	Maximum penalty
Trafficking in Persons	271.2(1), (1A)	Organise or facilitate the entry, proposed entry, exit, proposed exit, or receipt of another person, using coercion, threat or deception ⁶¹ to obtain that person's compliance	12 years, or 20 years for an

⁵⁶ 'Deceive' is defined in section 271.1 of the *Criminal Code* as to mislead as to fact (including the intention of any person) or as to law, by words or other conduct.

⁵⁷ 'Sexual service' is defined in the Dictionary to the *Criminal Code* as the use or display of the body of the person providing the service for the sexual gratification of others.

⁵⁸ 'Forced marriage' is defined in subsection 270.7A(1) of the *Criminal Code* as a marriage where, because of the use of coercion, threat or deception, one party to the marriage (the victim) entered into the marriage without freely and fully consenting.

⁵⁹ 'Debt bondage' is defined in the Dictionary to the *Criminal Code* as the status or condition that arises from a pledge by a person of his or her personal services, or of the personal services of another person under his or her control, as security for a debt owed, or claimed to be owed, (including any debt incurred, or claimed to be incurred, after the pledge is given), by that person if: the debt owed or claimed to be owed is manifestly excessive; or the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or the length and nature of those services are not respectively limited and defined.

⁶⁰ Under subsection 271.9(1) of the *Criminal Code*, a debt bondage offence is aggravated where: the victim is under 18; the offender subjected the victim to cruel, inhuman or degrading treatment; or the offender engaged in conduct that gave rise to a danger of death or serious harm to the victim or another person.

⁶¹ 'Coercion' and 'threat' are defined in section 270.1A of the *Criminal Code*. Coercion is defined as including coercion by any of the following: force; duress; detention; psychological oppression; abuse of power; or taking advantage of a person's vulnerability. Threat means: a threat of coercion; or a threat to cause a person's deportation or removal from Australia; or a threat of any other detrimental action, unless there are reasonable grounds for the threat of that action in connection with the provision of labour or

			aggravated offence ⁶²
	271.2(1B), (1C)	Organise or facilitate the entry, proposed entry, exit, proposed exit, or receipt of another person, reckless as to whether the other person will be exploited ⁶³	12 years, or 20 years for an aggravated offence
	271.2(2), (2A), (2B), (2C),	Organise or facilitate the entry, proposed entry, exit, proposed exit, or receipt of another person, deceiving the other person about: the provision, or nature of the provision, of sexual services; the extent to which the person will be free to leave, or to cease providing sexual services; the quantum or existence of a debt owed or claimed to be owed; or the fact the engagement will involve exploitation or the confiscation of travel or identity documents	12 years, or 20 years for an aggravated offence
Trafficking in Children	271.4(1), (2)	Organise or facilitate the entry, proposed entry, exit, proposed exit, or receipt of a person who is under 18, intending or reckless as to whether the person will be used to provide sexual services or will be otherwise exploited	25 years
Domestic trafficking in persons	271.5(1)	Organise or facilitate the transportation of a person from one place in Australia to another, using coercion, threat or deception to obtain that person's compliance	12 years, or 20 years for an aggravated offence ⁶⁴
	271.5(2)	Organise or facilitate the transportation of a person from one place in Australia to another, reckless as to whether the other person will be exploited	12 years, or 20 years for an aggravated offence

services by a person. Threat includes a threat made by any conduct, whether express or implied and whether conditional or unconditional.

⁶² Under subsection 271.3(1) of the *Criminal Code*, a trafficking in persons offence is aggravated where: the offender intended for the victim to be exploited; the offender subjected the victim to cruel, inhuman or degrading treatment; or the offender engaged in conduct that gave rise to a danger of death or serious harm to the victim or another person.

⁶³ 'Exploitation' is defined in section 271.1A of the *Criminal Code* as conduct which causes the victim to enter into any of the following conditions: slavery, or a condition similar to slavery; servitude; forced labour; forced marriage; or debt bondage.

⁶⁴ Under subsection 271.6(1) of the *Criminal Code*, a domestic trafficking in persons offence is aggravated where: the offender intended for the victim to be exploited; the offender subjected the victim to cruel, inhuman or degrading treatment; or the offender engaged in conduct that gave rise to a danger of death or serious harm to the victim or another person.

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