



Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013

No. 6, 2013

**An Act to amend the law relating to slavery,
slavery-like conditions and people trafficking, and
for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the law relating to slavery,
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for other purposes**

[Assented to 7 March 2013]

The Parliament of Australia enacts:

*Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act
2013No. 6, 20131*

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1 Short title

This Act may be cited as the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Criminal Code amendments

Criminal Code Act 1995

1 Paragraph 4.3(b) of the *Criminal Code*

Omit “by law there is a duty to perform”, substitute “there is a duty to perform by a law of the Commonwealth, a State or a Territory, or at common law”.

2 Section 73.2 of the *Criminal Code* (heading)

Repeal the heading, substitute:

73.2 Aggravated offence of people smuggling (danger of death or serious harm etc.)

3 Subsection 73.2(1) of the *Criminal Code*

Omit “any of the following applies”, substitute “either or both of the following apply”.

4 Paragraph 73.2(1)(a) of the *Criminal Code*

Repeal the paragraph.

5 Subsection 73.2(3) of the *Criminal Code*

Repeal the subsection.

6 Subsections 268.15(3), 268.60(3) and 268.83(3) of the *Criminal Code* (definitions of *sexual service*)

Repeal the definitions.

7 Division 270 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Division 270—Slavery and slavery-like conditions

8 Before section 270.1 of the *Criminal Code*

Insert:

Subdivision A—Preliminary

270.1A Definitions for Division 270

In this Division:

coercion includes coercion by any of the following:

- (a) force;
- (b) duress;
- (c) detention;
- (d) psychological oppression;
- (e) abuse of power;
- (f) taking advantage of a person's vulnerability.

conducting a business includes:

- (a) taking any part in the management of the business; and
- (b) exercising control or direction over the business; and
- (c) providing finance for the business.

deceive has the same meaning as in Division 271 (see section 271.1).

Note: **Deception** has a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

forced labour has the meaning given by section 270.6.

forced marriage has the meaning given by section 270.7A.

servitude has the meaning given by section 270.4.

slavery has the meaning given by section 270.1.

slavery-like offence means an offence against any of the following provisions:

- (a) section 270.5 (servitude offences);
- (b) section 270.6A (forced labour offences);
- (c) section 270.7 (deceptive recruiting for labour or services);
- (d) section 270.7B (forced marriage offences).

threat means:

- (a) a threat of coercion; or

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- (b) a threat to cause a person's deportation or removal from Australia; or
 - (c) a threat of any other detrimental action, unless there are reasonable grounds for the threat of that action in connection with the provision of labour or services by a person.

Note: *Threat* includes a threat made by any conduct, whether express or implied and whether conditional or unconditional (see the definition in the Dictionary).

Subdivision B—Slavery

9 Before paragraph 270.3(1)(a) of the *Criminal Code*

Insert:

- (aa) reduces a person to slavery; or

10 Paragraph 270.3(2)(b) of the *Criminal Code*

Omit “or slave trading;”, substitute “, slave trading or the reduction of a person to slavery;”.

11 Subsection 270.3(3) of the *Criminal Code*

Insert:

commercial transaction involving a slave includes a commercial transaction by which a person is reduced to slavery.

12 Sections 270.4 to 270.9 of the *Criminal Code*

Repeal the sections, substitute:

Subdivision C—Slavery-like conditions

270.4 Definition of *servitude*

- (1) For the purposes of this Division, *servitude* is the condition of a person (the *victim*) who provides labour or services, if, because of the use of coercion, threat or deception:
 - (a) a reasonable person in the position of the victim would not consider himself or herself to be free:
 - (i) to cease providing the labour or services; or
 - (ii) to leave the place or area where the victim provides the labour or services; and

- (b) 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.
- (2) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.
- (3) The victim may be in a condition of servitude whether or not:
 - (a) escape from the condition is practically possible for the victim; or
 - (b) the victim has attempted to escape from the condition.

270.5 Servitude offences

Causing a person to enter into or remain in servitude

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct causes another person to enter into or remain in servitude.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 20 years; or
- (b) in any other case—imprisonment for 15 years.

Conducting a business involving servitude

- (2) A person commits an offence if:
 - (a) the person conducts any business; and
 - (b) the business involves the servitude of another person (or persons).

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 20 years; or
- (b) in any other case—imprisonment for 15 years.

Alternative verdict of forced labour

- (3) Subsection (4) applies if, in a prosecution for an offence (the *servitude offence*) against a provision listed in column 1 of the following table, the trier of fact:
- (a) is not satisfied that the defendant is guilty of that offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the *forced labour offence*) against the corresponding provision listed in column 2 of the table.

Servitude and forced labour offences

Item	Column 1	Column 2
	Servitude offences	Forced labour offences
1	Subsection (1) of this section	Subsection 270.6A(1)
2	Subsection (2) of this section	Subsection 270.6A(2)

- (4) The trier of fact may find the defendant not guilty of the servitude offence, but guilty of the forced labour offence, so long as the defendant has been afforded procedural fairness in relation to that finding of guilt.

270.6 Definition of *forced labour*

- (1) For the purposes of this Division, *forced labour* is 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:
- (a) to cease providing the labour or services; or
 - (b) to leave the place or area where the victim provides the labour or services.
- (2) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.
- (3) The victim may be in a condition of forced labour whether or not:
- (a) escape from the condition is practically possible for the victim; or
 - (b) the victim has attempted to escape from the condition.

270.6A Forced labour offences

Causing a person to enter into or remain in forced labour

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct causes another person to enter into or remain in forced labour.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 12 years; or
- (b) in any other case—imprisonment for 9 years.

Conducting a business involving forced labour

- (2) A person commits an offence if:
- (a) the person conducts any business; and
 - (b) the business involves the forced labour of another person (or persons).

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 12 years; or
- (b) in any other case—imprisonment for 9 years.

Note: On a trial for an offence against section 270.5 (servitude offences), the trier of fact may find a defendant not guilty of that offence but guilty of the corresponding offence under this section (see subsections 270.5(3) and (4)).

270.7 Deceptive recruiting for labour or services

A person (the *recruiter*) commits an offence if:

- (a) the recruiter engages in conduct; and
- (b) the recruiter engages in the conduct with the intention of inducing another person (the *victim*) to enter into an engagement to provide labour or services; and
- (c) the conduct causes the victim to be deceived about:
 - (i) the extent to which the victim will be free to leave the place or area where the victim provides the labour or services; or

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- (ii) the extent to which the victim will be free to cease providing the labour or services; or
 - (iii) the extent to which the victim will be free to leave his or her place of residence; or
 - (iv) if there is or will be a debt owed or claimed to be owed by the victim in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or
 - (v) the fact that the engagement will involve exploitation, or the confiscation of the victim's travel or identity documents; or
 - (vi) if the engagement is to involve the provision of sexual services—that fact, or the nature of sexual services to be provided (for example, whether those services will require the victim to have unprotected sex).

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 9 years; or
- (b) in any other case—imprisonment for 7 years.

270.7A Definition of *forced marriage*

- (1) For the purposes of this Division, a marriage is a ***forced marriage*** if, 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.
 - (2) For the purposes of subsection (1), ***marriage*** includes the following:
 - (a) a registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;
 - (b) a marriage recognised under a law of a foreign country;
 - (c) a relationship registered (however that process is described) under a law of a foreign country, if the relationship is of the same, or a similar, type as any registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;
 - (d) a marriage (including a relationship or marriage mentioned in paragraph (a), (b) or (c)) that is void, invalid, or not recognised by law, for any reason, including the following:
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- (i) a party to the marriage has not freely or fully consented to the marriage (for example, because of natural, induced or age-related incapacity);
- (ii) a party to the marriage is married (within the meaning of this subsection) to more than one person.

Note: Section 2E of the *Acts Interpretation Act 1901* covers relationships registered under a law of a State or Territory that are prescribed by regulations under that Act.

- (3) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.

270.7B Forced marriage offences

Causing a person to enter into a forced marriage

- (1) A person (the **first person**) commits an offence if:
 - (a) the first person engages in conduct; and
 - (b) the conduct causes another person to enter into a forced marriage as the victim of the marriage.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 7 years; or
- (b) in any other case—imprisonment for 4 years.

Being a party to a forced marriage

- (2) A person commits an offence if:
 - (a) the person is a party to a marriage (within the meaning of section 270.7A); and
 - (b) the marriage is a forced marriage; and
 - (c) the person is not a victim of the forced marriage.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 7 years; or
- (b) in any other case—imprisonment for 4 years.

- (3) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1.

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- (4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3)).

270.8 Slavery-like offences—aggravated offences

- (1) For the purposes of this Division, a slavery-like offence committed by a person (the *offender*) against another person (the *victim*) is an **aggravated offence** if any of the following applies:
- (a) the victim is under 18;
 - (b) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
 - (c) the offender, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
 - (ii) is reckless as to that danger.
- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (3) If, on a trial for an aggravated offence, the trier of fact is not satisfied that the defendant is guilty of the aggravated offence, but is otherwise satisfied that the defendant is guilty of the corresponding slavery-like offence, it may find the defendant not guilty of the aggravated offence, but guilty of the corresponding slavery-like offence.
- (4) Subsection (3) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the corresponding slavery-like offence.

270.9 Slavery-like offences—jurisdictional requirement

Section 15.2 (extended geographical jurisdiction—category B) applies to a slavery-like offence.

270.10 Slavery-like offences—relevant evidence

- (1) For the purposes of proceedings for a slavery-like offence, the trier of fact may have regard to any of the matters covered by subsection (2) in determining whether a person (the *alleged victim*)

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against whom the offence is alleged to have been committed has been coerced, threatened or deceived.

- (2) The following matters are covered by this subsection:
- (a) the economic relationship between the alleged victim and the alleged offender;
 - (b) the terms of any written or oral contract or agreement between the alleged victim and the alleged offender;
 - (c) the personal circumstances of the alleged victim, including but not limited to:
 - (i) whether he or she is entitled to be in Australia under the *Migration Act 1958*; and
 - (ii) his or her ability to speak, write and understand English or another language; and
 - (iii) the extent of his or her social and physical dependence on the alleged offender.
- (3) Subsection (1) does not:
- (a) prevent the leading of any other evidence in the relevant proceedings; or
 - (b) limit the manner in which evidence may be given or the admissibility of evidence.

Subdivision D—Offences against Division 270: general

270.11 Offences against Division 270—no defence of victim consent or acquiescence

To avoid doubt, 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.

13 Section 270.12 of the *Criminal Code* (heading)

Repeal the heading, substitute:

270.12 Offences against Division 270—other laws not excluded

14 Section 270.12 of the *Criminal Code*

Before “This Division”, insert “(1)”.

15 At the end of section 270.12 of the *Criminal Code*

Add:

- (2) Without limiting subsection (1), this Division is not intended to exclude or limit the concurrent operation of any other law of the Commonwealth, or a law of a State or Territory, that makes:
 - (a) an act or omission that is an offence against a provision of this Division; or
 - (b) a similar act or omission;an offence against the law of the Commonwealth, State or Territory.
- (3) Subsection (2) applies even if the other law of the Commonwealth, or the law of the State or Territory, does any one or more of the following:
 - (a) provides for a penalty for the offence that differs from the penalty provided for in this Division;
 - (b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Division;
 - (c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Division.

16 Section 270.13 of the *Criminal Code* (heading)

Repeal the heading, substitute:

270.13 Offences against Division 270—double jeopardy

17 Section 270.14 of the *Criminal Code*

Repeal the section.

18 Section 271.1 of the *Criminal Code*

Insert:

coercion has the same meaning as in Division 270 (see section 270.1A).

19 Section 271.1 of the *Criminal Code* (at the end of the definition of *deceive*)

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Add:

Note: *Deception* has a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

20 Section 271.1 of the *Criminal Code*

Insert:

exploitation has the meaning given by section 271.1A.

21 Section 271.1 of the *Criminal Code* (definition of *threat*)

Repeal the definition, substitute:

threat has the same meaning as in Division 270 (see section 271.1A).

22 After section 271.1 of the *Criminal Code*

Insert:

271.1A Definition of *exploitation*

For the purposes of this Division, *exploitation*, of one person (the *victim*) by another person, occurs if the other person's conduct causes the victim to enter into any of the following conditions:

- (a) slavery, or a condition similar to slavery;
- (b) servitude;
- (c) forced labour;
- (d) forced marriage;
- (e) debt bondage.

Note: Division 270 (slavery and slavery-like offences) deals with slavery, servitude, forced labour and forced marriage. Subdivision C of this Division deals with debt bondage.

23 Paragraphs 271.2(1)(b) and (c) of the *Criminal Code*

Omit "force or threats", substitute "coercion, threat or deception".

24 Paragraphs 271.2(1A)(b) and (c) of the *Criminal Code*

Omit "force or threats", substitute "coercion, threat or deception".

25 Paragraphs 271.2(2)(b) and (2A)(b) of the *Criminal Code*

Omit "or debt bondage".

26 Section 271.3 of the *Criminal Code* (heading)

Repeal the heading, substitute:

271.3 Trafficking in persons—aggravated offence

27 Subparagraph 271.3(1)(a)(i) of the *Criminal Code*

Omit “; and”, substitute “; or”.

28 Subparagraph 271.3(1)(c)(i) of the *Criminal Code*

After “victim”, insert “or another person”.

29 At the end of section 271.3 of the *Criminal Code*

Add:

- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.2.

Note: Section 271.2 provides for offences of trafficking in persons.

30 Subsection 271.4(3) of the *Criminal Code*

Repeal the subsection.

31 Paragraphs 271.5(1)(b) and (c) of the *Criminal Code*

Omit “force or threats”, substitute “coercion, threat or deception”.

32 Paragraph 271.5(2A)(b) of the *Criminal Code*

Omit “or debt bondage”.

33 Section 271.6 of the *Criminal Code* (heading)

Repeal the heading, substitute:

271.6 Domestic trafficking in persons—aggravated offence

34 Subparagraph 271.6(1)(c)(i)

After “victim”, insert “or another person”.

35 At the end of section 271.6 of the *Criminal Code*

Add:

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- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.5.

Note: Section 271.5 provides for offences of domestic trafficking in persons.

36 Section 271.7 of the *Criminal Code*

Omit “(1) A person”, substitute “A person”.

37 Subsection 271.7(2) of the *Criminal Code*

Repeal the subsection.

38 After section 271.7

Insert:

Subdivision BA—Organ trafficking

271.7A Removal of organs contrary to this Subdivision

The removal of a person’s organ is contrary to this Subdivision if:

- (a) the removal, or entering into an agreement for the removal, would be contrary to the law of the State or Territory where it is, or is to be, carried out; or
- (b) neither the victim, nor the victim’s guardian, consents to the removal, and it would not meet a medical or therapeutic need of the victim.

271.7B Offence of organ trafficking—entry into and exit from Australia

Entry into Australia

- (1) A person (the *offender*) commits an offence of organ trafficking if:
- (a) the offender engages in conduct consisting of the organisation or facilitation of the entry or proposed entry, or the receipt, of another person (the *victim*) into Australia; and
 - (b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that entry or receipt.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

Exit from Australia

- (2) A person (the *offender*) commits an offence of organ trafficking if:
- (a) the offender engages in conduct consisting of the organisation or facilitation of the exit or proposed exit of another person (the *victim*) from Australia; and
 - (b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that exit.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

271.7C Organ trafficking—aggravated offence

- (1) A person (the *offender*) commits an aggravated offence of organ trafficking if the offender commits an offence of organ trafficking in relation to another person (the *victim*) and any of the following applies:
- (a) the victim is under 18;
 - (b) the offender commits the offence intending that an organ of the victim will be removed contrary to this Subdivision, either by the offender or another person:
 - (i) if the offence of organ trafficking is an offence against subsection 271.7B(1)—after or in the course of entry into Australia; or
 - (ii) if the offence of organ trafficking is an offence against subsection 271.7B(2)—after or in the course of exit from Australia;
 - (c) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
 - (d) the offender, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
 - (ii) is reckless as to that danger.

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Penalty:

- (a) if this subsection applies because the victim is under 18—imprisonment for 25 years; or
- (b) in any other case—imprisonment for 20 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

- (2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.7B, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.
- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7B.

Note: Section 271.7B provides for offences of organ trafficking.

271.7D Offence of domestic organ trafficking

A person (the *offender*) commits an offence of domestic organ trafficking if:

- (a) the offender engages in conduct consisting of the organisation, or facilitation, of the transportation or proposed transportation of another person (the *victim*) from one place in Australia to another place in Australia; and
- (b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that transportation.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

271.7E Domestic organ trafficking—aggravated offence

- (1) A person (the *offender*) commits an aggravated offence of domestic organ trafficking if the offender commits an offence of domestic organ trafficking in relation to another person (the *victim*) and any of the following applies:
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- (a) the victim is under 18;
 - (b) the offender commits the offence intending that an organ of the victim will be removed contrary to this Subdivision, either by the offender or another person, after arrival at the place to which the person has been transported, or in the course of transportation;
 - (c) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
 - (d) the offender, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
 - (ii) is reckless as to that danger.

Penalty:

- (a) if this subsection applies because the victim is under 18—imprisonment for 25 years; or
- (b) in any other case—imprisonment for 20 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

- (2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.7D, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.
- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7D.

Note: Section 271.7D provides for offences of domestic organ trafficking.

Subdivision BB—Harbouring a victim**271.7F Harbouring a victim**

- (1) A person (the *offender*) commits an offence of harbouring a victim if:
 - (a) the offender harbours, receives or conceals another person (the *victim*); and
 - (b) the harbouring, receipt or concealing of the victim:
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- (i) assists a third person in connection with any offence committed by the third person (the *third person offence*); or
- (ii) furthers a third person's purpose in relation to any offence committed by the third person (the *third person offence*); and
- (c) the third person offence is an offence against this Division (apart from this section) or Division 270.

Penalty: Imprisonment for 4 years.

- (2) Recklessness applies in relation to paragraph (1)(b).
- (3) Absolute liability applies in relation to paragraph (1)(c).
- (4) A person may be found guilty of an offence against subsection (1) even if the third person has not been prosecuted for, or has not been found guilty, of any other offence.

271.7G Harbours a victim—aggravated offence

- (1) A person (the *offender*) commits an aggravated offence of harbouring a victim if:
 - (a) the offender commits an offence of harbouring a victim in relation to another person (the *victim*); and
 - (b) the victim is under 18.

Penalty: Imprisonment for 7 years.

- (2) If, on a trial for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that the defendant is guilty of an offence against section 271.7F, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.
- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7F.

Note: Section 271.7F provides for the offence of harbouring a victim.

39 Subsection 271.8(1) of the *Criminal Code*

Omit "(1)".

40 Subsection 271.8(1) of the *Criminal Code* (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 4 years.

41 Subsections 271.8(2) and (3) of the *Criminal Code*

Repeal the subsections.

42 Section 271.9 of the *Criminal Code*

Repeal the section, substitute:

271.9 Debt bondage—aggravated offence

- (1) A person (the *offender*) commits an offence of aggravated debt bondage if the offender commits an offence of debt bondage in relation to another person (the *victim*) and any of the following applies:
- (a) the victim is under 18;
 - (b) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
 - (c) the offender, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
 - (ii) is reckless as to that danger.

Penalty: Imprisonment for 7 years.

- (2) If, on a trial for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that the defendant is guilty of an offence against section 271.8, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.
- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.8.

Note: Section 271.8 provides for the offence of debt bondage.

**43 Subdivision D of Division 271 of the *Criminal Code*
(heading)**

Repeal the heading, substitute:

Subdivision D—Offences against Division 271: general

44 Section 271.10 of the *Criminal Code* (heading)

Repeal the heading, substitute:

271.10 Jurisdictional requirements—offences other than domestic trafficking in persons or organs

45 Section 271.10 of the *Criminal Code*

Omit “271.8 or 271.9”, substitute “271.7B, 271.7C, 271.7F, 271.7G, 271.8 or 271.9”.

46 Section 271.11 of the *Criminal Code* (heading)

Repeal the heading, substitute:

271.11 Jurisdictional requirements—offences of domestic trafficking in persons or organs

47 Section 271.11 of the *Criminal Code*

Omit “or 271.7”, substitute “, 271.7, 271.7D or 271.7E”.

48 After section 271.11 of the *Criminal Code*

Insert:

271.11A Offences against Division 271—relevant evidence

- (1) For the purposes of proceedings for an offence against this Division, the trier of fact may have regard to any of the matters covered by subsection (2) in determining whether, in relation to a person (the *alleged victim*) against whom the offence is alleged to have been committed:
 - (a) in the case of an offence against Subdivision B or BB—the alleged victim has been coerced, threatened or deceived; or
 - (b) in the case of an offence against Subdivision BA—the alleged victim, or the alleged victim’s guardian, has consented to the removal of an organ of the alleged victim; or

-
- (c) in the case of an offence against Subdivision C—another person has caused the alleged victim to enter into debt bondage.
- (2) The following matters are covered by this subsection:
- (a) the economic relationship between the alleged victim and the alleged offender;
 - (b) the terms of any written or oral contract or agreement between the alleged victim and the alleged offender;
 - (c) the personal circumstances of the alleged victim, including but not limited to:
 - (i) whether he or she is entitled to be in Australia under the *Migration Act 1958*; and
 - (ii) his or her ability to speak, write and understand English or another language; and
 - (iii) the extent of his or her social and physical dependence on the alleged offender.
- (3) If subsection (1) applies in relation to the consent of an alleged victim's guardian to the removal of an organ of the alleged victim, a reference in subsection (2) to the alleged victim is taken to include a reference to the alleged victim's guardian.
- (4) Subsection (1) does not:
- (a) prevent the leading of any other evidence in the relevant proceedings; or
 - (b) limit the manner in which evidence may be given or the admissibility of evidence.

271.11B Offences against Division 271—no defence of victim consent or acquiescence

To avoid doubt, 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.

49 Section 271.12 of the *Criminal Code* (heading)

Repeal the heading, substitute:

271.12 Offences against Division 271—other laws not excluded

50 Section 271.12 of the *Criminal Code*

Before “This Division”, insert “(1)”.

51 At the end of section 271.12 of the *Criminal Code*

Add:

- (2) Without limiting subsection (1), this Division is not intended to exclude or limit the concurrent operation of any other law of the Commonwealth, or a law of a State or Territory, that makes:
 - (a) an act or omission that is an offence against a provision of this Division; or
 - (b) a similar act or omission;an offence against the law of the Commonwealth, State or Territory.
- (3) Subsection (2) applies even if the other law of the Commonwealth, or the law of the State or Territory, does any one or more of the following:
 - (a) provides for a penalty for the offence that differs from the penalty provided for in this Division;
 - (b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Division;
 - (c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Division.

52 Dictionary in the *Criminal Code* (definition of *exploitation*)

Repeal the definition, substitute:

exploitation has the same meaning as in Division 271 (see section 271.1A).

53 Dictionary in the *Criminal Code* (definition of *forced labour*)

Repeal the definition, substitute:

forced labour has the same meaning as in Division 270 (see section 270.6).

54 Dictionary in the *Criminal Code*

Insert:

forced marriage has the same meaning as in Division 270 (see section 270.7A).

55 Dictionary in the *Criminal Code*

Insert:

servitude has the same meaning as in Division 270 (see section 270.4).

56 Dictionary in the *Criminal Code* (definition of *sexual service*)

Omit “commercial”.

57 Dictionary in the *Criminal Code* (definition of *sexual servitude*)

Repeal the definition.

58 Dictionary in the *Criminal Code*

Insert:

slavery-like offence has the same meaning as in Division 270 (see section 270.1A).

Schedule 2—Amendments of other Acts

Crimes Act 1914

1 Paragraph 15Y(1)(c)

Omit “(Slavery, sexual servitude and deceptive recruiting)”, substitute “(Slavery and slavery-like conditions)”.

2 Paragraph 21B(1)(d)

Omit “by the person as a direct result of the offence”, substitute “, or any expense incurred, by the person by reason of the offence”.

Migration Act 1958

3 Section 233B (heading)

Repeal the heading, substitute:

233B Aggravated offence of people smuggling (danger of death or serious harm etc.)

4 Subsection 233B(1)

Omit “any of the following applies”, substitute “either or both of the following apply”.

5 Paragraph 233B(1)(a)

Repeal the paragraph.

6 Subsection 233B(4) (definition of *exploit*)

Repeal the definition.

7 Subsection 233B(4) (definition of *forced labour*)

Repeal the definition.

8 Subsection 233B(4) (definition of *sexual servitude*)

Repeal the definition.

9 Subsection 233B(4) (definition of *slavery*)

Repeal the definition.

10 Paragraph 245AA(2)(c)

Omit “(defines *exploited*);”, substitute “(defines *exploited*).”.

11 Paragraph 245AA(2)(d)

Repeal the paragraph.

12 At the end of paragraph 245AG(2)(d)

Add “within the meaning of the *Criminal Code* (see the Dictionary to the *Criminal Code*)”.

13 Sections 245AH and 245AI

Repeal the sections, substitute:

245AH Meaning of *exploited*

For the purposes of this Subdivision, a person is *exploited* if the person is subjected to *exploitation* within the meaning of the *Criminal Code* (see section 271.1A of the *Criminal Code*).

Proceeds of Crime Act 2002

14 Section 338 (subparagraph (b)(ii) of the definition of *serious offence*)

Omit “exploitation, or”.

Telecommunications (Interception and Access) Act 1979

15 Subparagraphs 5D(3A)(a)(ii) and (iii)

Repeal the subparagraphs, substitute:

- (ii) section 270.3, 270.5, 270.6A, 270.7, 270.7B or 270.8 (slavery or slavery-like conditions);
- (iii) section 271.2, 271.3, 271.4, 271.5, 271.6 or 271.7 (trafficking in persons);
- (iv) section 271.7B, 271.7C, 271.7D or 271.7E (organ trafficking);

Schedule 2 Amendments of other Acts

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- (v) section 271.7F or 271.7G (harbouring victims);
- (vi) section 271.8 or 271.9 (debt bondage); or

Schedule 3—Application of amendments

1 Application of amendments made by this Act

The amendments made by this Act apply in relation to an offence against a law of the Commonwealth committed (or alleged to have been committed) on or after the day this Act commences.

Note: This Act commences on the day after the Act receives the Royal Assent (see section 2).

*[Minister's second reading speech made in—
House of Representatives on 30 May 2012
Senate on 27 February 2013]*