



Criminal Code Amendment (Trafficking in Persons Offences) Act 2005

No. 96, 2005

**An Act to amend the *Criminal Code Act 1995* to
provide for offences relating to trafficking in
persons, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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No. 96, 2005

**An Act to amend the *Criminal Code Act 1995* to
provide for offences relating to trafficking in
persons, and for related purposes**

[Assented to 6 July 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Criminal Code Amendment
(Trafficking in Persons Offences) Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	6 July 2005
2. Schedules 1 and 2	The 28th day after the day on which this Act receives the Royal Assent.	3 August 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendments relating to deceptive recruiting, trafficking in persons and debt bondage

Criminal Code Act 1995

1 Subsection 73.2(2) of the *Criminal Code*

Repeal the subsection.

2 Subsection 73.6(2) of the *Criminal Code*

Repeal the subsection.

3 Subsection 270.4(2) of the *Criminal Code* (definition of *sexual service*)

Repeal the definition.

4 Section 270.5 of the *Criminal Code*

Repeal the section, substitute:

270.5 Jurisdictional requirement

Section 15.2 (extended geographical jurisdiction—category B)
applies to an offence against section 270.6 or 270.7.

5 Subsection 270.6(1) of the *Criminal Code* (penalty)

Omit “19 years”, substitute “20 years”.

6 Subsection 270.6(2) of the *Criminal Code* (penalty)

Omit “19 years”, substitute “20 years”.

7 Subsection 270.7(1) of the *Criminal Code*

Repeal the subsection, substitute:

- (1) A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about:

- (a) the fact that the engagement will involve the provision of sexual services; or
 - (aa) the nature of sexual services to be provided (for example, whether those services will require the person to have unprotected sex); or
 - (b) the extent to which the person will be free to leave the place or area where the person provides sexual services; or
 - (c) the extent to which the person will be free to cease providing sexual services; or
 - (d) the extent to which the person will be free to leave his or her place of residence; or
 - (da) if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or
 - (e) the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person’s travel or identity documents;
- is guilty of an offence.

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.
- (1A) In determining, for the purposes of any proceedings for an offence against subsection (1), whether a person has been deceived about any matter referred to in a paragraph of that subsection, a court, or if the trial is before a jury, the jury, may have regard to any of the following matters:
- (a) the economic relationship between the person and the alleged offender;
 - (b) the terms of any written or oral contract or agreement between the person and the alleged offender;
 - (c) the personal circumstances of the person, including but not limited to:
 - (i) whether the person is entitled to be in Australia under the *Migration Act 1958*; and
 - (ii) the person’s ability to speak, write and understand English or the language in which the deception or inducement occurred; and

- (iii) the extent of the person's social and physical dependence on the alleged offender.

(1B) Subsection (1A) does not:

- (a) prevent the leading of any other evidence in proceedings for an offence against subsection (1); or
(b) limit the manner in which evidence may be adduced or the admissibility of evidence.

7A Subsection 270.7(2)

Insert:

deceive has the same meaning as in Division 271.

8 Sections 270.10 and 270.11 of the *Criminal Code*

Repeal the sections.

9 At the end of Chapter 8 of the *Criminal Code*

Add:

Division 271—Trafficking in persons and debt bondage

Subdivision A—Definitions

271.1 Definitions

In this Division:

confiscate, in relation to a person's travel or identity document, means to take possession of the document, whether permanently or otherwise, to the exclusion of the person, or to destroy the document.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

deceive means mislead as to fact (including the intention of any person) or as to law, by words or other conduct.

threat means:

- (a) a threat of force; or
(b) a threat to cause a person's removal from Australia; or

- (c) a threat of any other detrimental action;
unless there are reasonable grounds for the threat of that action.

Subdivision B—Offences relating to trafficking in persons

271.2 Offence of trafficking in persons

- (1) A person (the *first person*) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) the first person uses force or threats; and
 - (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that entry or proposed entry or in respect of that receipt.

Penalty: Imprisonment for 12 years.

- (1A) A person (the *first person*) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) the first person uses force or threats; and
 - (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that exit or proposed exit.

Penalty: Imprisonment for 12 years.

- (1B) A person (the *first person*) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) in organising or facilitating that entry or proposed entry, or that receipt, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 12 years.

- (1C) A person (the *first person*) commits an offence of trafficking in persons if:

-
- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) in organising or facilitating that exit or proposed exit, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 12 years.

- (2) A person (the *first person*) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) the first person deceives the other person about the fact that the other person's entry or proposed entry, the other person's receipt or any arrangements for the other person's stay in Australia, will involve the provision by the other person of sexual services or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2A) A person (the *first person*) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) the first person deceives the other person about the fact that the other person's exit or proposed exit is for purposes that involve the provision by the other person of sexual services outside Australia or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2B) A person (the *first person*) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) there is an arrangement for the other person to provide sexual services in Australia; and

- (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

- (2C) A person (the *first person*) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) there is an arrangement for the other person to provide sexual services outside Australia; and
 - (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

(3) Absolute liability applies to paragraphs (1)(c) and (1A)(c).

271.3 Aggravated offence of trafficking in persons

- (1) A person (the *first person*) commits an aggravated offence of trafficking in persons if the first person commits the offence of trafficking in persons in relation to another person (the *victim*) and any of the following applies:
- (a) the first person commits the offence intending that the victim will be exploited, either by the first person or another:
 - (i) if the offence of trafficking in persons is an offence against subsection 271.2(1), (1B), (2) or (2B)—after entry into Australia; and
 - (ii) if the offence of trafficking in persons is an offence against subsection 271.2(1A), (1C), (2A) or (2C)—after exit from Australia;
 - (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
 - (c) the first person, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
 - (ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

- (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 271.2, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

271.4 Offence of trafficking in children

- (1) A person (the *first person*) commits an offence of trafficking in children if:
- (a) the first person organises or facilitates the entry or proposed entry into Australia, or the receipt in Australia, of another person; and
 - (b) the other person is under the age of 18; and

- (c) in organising or facilitating that entry or proposed entry, or that receipt, the first person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 25 years.

- (2) A person (the *first person*) commits an offence of trafficking in children if:
 - (a) the first person organises or facilitates the exit or proposed exit from Australia of another person; and
 - (b) the other person is under the age of 18; and
 - (c) in organising or facilitating that exit or proposed exit, the first person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 25 years.

- (3) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

271.5 Offence of domestic trafficking in persons

- (1) A person (the *first person*) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and
 - (b) the first person uses force or threats; and

- (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that transportation or proposed transportation.

Penalty: Imprisonment for 12 years.

- (2) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and
 - (b) in organising or facilitating that transportation or proposed transportation, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that transportation.

Penalty: Imprisonment for 12 years.

- (2A) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision by the other person of sexual services or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2B) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) there is an arrangement for the other person to provide sexual services; and
 - (c) the first person deceives the other person about any of the following:

- (i) the nature of the sexual services to be provided;
- (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
- (iii) the extent to which the other person will be free to cease providing sexual services;
- (iv) the extent to which the other person will be free to leave his or her place of residence;
- (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

- (3) Absolute liability applies to paragraph (1)(c).

271.6 Aggravated offence of domestic trafficking in persons

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

Penalty: Imprisonment for 20 years.

- (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 271.5, it may find the

defendant not guilty of the aggravated offence, but guilty of an offence against that section.

271.7 Offence of domestic trafficking in children

- (1) A person commits an offence of domestic trafficking in children if:
- (a) the first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) the other person is under the age of 18; and
 - (c) in organising or facilitating that transportation, the first-mentioned person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.

Penalty: Imprisonment for 25 years.

- (2) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

Subdivision C—Offences relating to debt bondage

271.8 Offence of debt bondage

- (1) A person commits an offence of debt bondage if:
- (a) the person engages in conduct that causes another person to enter into debt bondage; and
 - (b) the person intends to cause the other person to enter into debt bondage.

Penalty: Imprisonment for 12 months.

- (2) In determining, for the purposes of any proceedings for an offence against subsection (1), whether a person (the *first person*) has

caused another person (the *second person*) to enter into debt bondage, a court, or if the trial is before a jury, the jury, may have regard to any of the following matters:

- (a) the economic relationship between the first person and the second person;
- (b) the terms of any written or oral contract or agreement between the second person and another person (whether or not the first person);
- (c) the personal circumstances of the second person, including but not limited to:
 - (i) whether the second person is entitled to be in Australia under the *Migration Act 1958*; and
 - (ii) the second person's ability to speak, write and understand English or the language in which the deception or inducement occurred; and
 - (iii) the extent of the second person's social and physical dependence on the first person.
- (3) Subsection (2) does not:
 - (a) prevent the leading of any other evidence in proceedings for an offence against subsection (1); or
 - (b) limit the manner in which evidence may be adduced or the admissibility of evidence.

271.9 Offence of aggravated debt bondage

- (1) A person commits an offence of aggravated debt bondage if the person commits an offence of debt bondage in relation to another person (the *victim*) and the victim is under 18.

Penalty: Imprisonment for 2 years.

- (2) In order to prove an offence of aggravated debt bondage, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.
- (3) 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 271.8, it may find the

defendant not guilty of the aggravated offence but guilty of an offence against that section.

Subdivision D—General provisions relating to offences under this Division

271.10 Jurisdictional requirement for offences other than offences related to domestic trafficking in persons

Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against section 271.2, 271.3, 271.4, 271.8 or 271.9.

271.11 Jurisdictional requirement for offences related to domestic trafficking in persons

A person commits an offence against section 271.5, 271.6 or 271.7 only if one or more of the following paragraphs applies:

- (a) the conduct constituting the offence occurs to any extent outside Australia;
- (b) the conduct constituting the offence involves transportation across State borders, either for reward or in connection with a commercial arrangement;
- (c) the conduct constituting the offence occurs within a Territory or involves transportation to or from a Territory;
- (d) 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;
- (e) 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.

271.12 Other laws not excluded

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

271.13 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

10 Dictionary in the *Criminal Code*

Insert:

debt bondage means the status or condition that arises from a pledge by a person:

- (a) of his or her personal services; or
- (b) 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:

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

11 Dictionary in the *Criminal Code*

Insert:

exploitation, of one person (the ***victim***) by another person (the ***exploiter***), occurs if:

- (a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude; or
- (b) the exploiter's conduct causes an organ of the victim to be removed and:
 - (i) the removal is contrary to the law of the State or Territory where it is carried out; or
 - (ii) neither the victim nor the victim's legal guardian consented to the removal and it does not meet a medical or therapeutic need of the victim.

12 Dictionary in the *Criminal Code*

Insert:

forced labour is defined in section 73.2.

13 Dictionary in the *Criminal Code*

Insert:

identity document includes any kind of document that may be used to establish the identity of a person in a country under the law or procedures of that country.

14 Dictionary in the *Criminal Code*

Insert:

personal service means any labour or service, including a sexual service, provided by a person.

15 Dictionary in the *Criminal Code*

Insert:

sexual service means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

16 Dictionary in the *Criminal Code*

Insert:

travel document includes any kind of document required, under the law of a country, to enter or leave that country.

Schedule 2—Consequential amendments

Crimes Act 1914

1 After paragraph 15Y(1)(c)

Insert:

- (caa) an offence against Division 271 of the *Criminal Code* (trafficking in persons, trafficking in children, debt bondage);
- or

2 Paragraph 15Y(1)(e)

After “paragraph (a), (b), (c)”, insert “, (caa)”.

3 Paragraph 15Y(1)(f)

After “paragraph (a), (b), (c),”, insert “(caa),”.

Telecommunications (Interception) Act 1979

4 Paragraphs 5D(3A)(a) and (b)

Repeal the paragraphs, substitute:

- (a) section 73.1, 73.2, 73.3, 73.8, 73.9, 73.10 or 73.11; or
- (b) section 270.3, 270.6, 270.7 or 270.8; or
- (c) section 271.2, 271.3, 271.4, 271.5, 271.6 or 271.7;

[Minister’s second reading speech made in—
Senate on 8 December 2004
House of Representatives on 21 June 2005]

(238/04)



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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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**

[Assented to 7 March 2013]

The Parliament of Australia enacts:

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

- (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:

- (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*)

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*)

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:

- (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.

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:

- (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 Harboursing a victim—aggravated offence

- (1) A person (the *offender*) commits an aggravated offence of harboursing a victim if:
 - (a) the offender commits an offence of harboursing 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 harboursing 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

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- (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);
- (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]*

(110/12)

2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As passed by both Houses

**Migration Amendment (Reform of
Employer Sanctions) Bill 2013**

No. , 2013

**A Bill for an Act to amend the law relating to
migration, and for other purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **migration, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Migration Amendment (Reform of*
6 *Employer Sanctions) Act 2013*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1 **Schedule 1—Employer sanctions etc.**

2 **Part 1—Amendments**

3 *Migration Act 1958*

4 **1 Subsection 5(1)**

5 Insert:

6 *civil penalty order* has the meaning given by subsection 486R(4).

7 **2 Subsection 5(1)**

8 Insert:

9 *evidential burden*, in relation to a matter, means the burden of
10 adducing or pointing to evidence that suggests a reasonable
11 possibility that the matter exists or does not exist.

12 **3 Subsection 5(1)**

13 Insert:

14 *work-related condition* means a condition:

- 15 (a) prohibiting the holder of a visa from working in Australia; or
16 (b) restricting the work that the holder of a visa may do in
17 Australia.

18 **4 Subparagraph 140K(1)(a)(iii)**

19 Omit “an order for a civil penalty under Part 8D”, substitute “a civil
20 penalty order”.

21 **5 Paragraph 140K(1)(b)**

22 Repeal the paragraph, substitute:

- 23 (b) the person may be issued with an infringement notice under
24 regulations made for the purposes of section 506A as an
25 alternative to proceedings for a civil penalty order;

26 **6 Subparagraph 140K(2)(a)(ii)**

27 Omit “an order for a civil penalty under Part 8D”, substitute “a civil
28 penalty order”.

1 **7 Paragraph 140K(2)(b)**

2 Repeal the paragraph, substitute:

3 (b) the person may be issued with an infringement notice under
4 regulations made for the purposes of section 506A as an
5 alternative to proceedings for a civil penalty order;

6 **8 Subsections 140Q(1) and (2) (civil penalties)**

7 Repeal the civil penalties, substitute:

8 Civil penalty: 60 penalty units.

9 **9 Section 140R**

10 Repeal the section.

11 **10 Subsection 140S(3)**

12 Omit “civil penalty proceedings”, substitute “proceedings for a civil
13 penalty order”.

14 **11 Subsection 140S(3)**

15 Omit “under subsection 486R(6)”, substitute “of a kind referred to in
16 subsection 486S(4)”.

17 **12 Subsections 140XE(3) and 140XF(3) (civil penalties)**

18 Repeal the civil penalties, substitute:

19 Civil penalty: 60 penalty units.

20 **13 Division 12 of Part 2 (heading)**

21 Repeal the heading, substitute:

22 **Division 12—Offences etc. in relation to entry into, and
23 remaining in, Australia**

24 **14 Subdivision C of Division 12 of Part 2 (heading)**

25 Repeal the heading, substitute:

1 **Subdivision C—Offences and civil penalties in relation to work**
2 **by non-citizens**

3 **15 Subsection 245AA(1)**

4 After “offences”, insert “, and provides for civil penalties,”.

5 **16 Subsection 245AA(2)**

6 Omit “The offences make use of”, substitute “This Subdivision uses”.

7 **17 Sections 245AB to 245AE**

8 Repeal the sections, substitute:

9 **245AB Allowing an unlawful non-citizen to work**

10 (1) A person (the *first person*) contravenes this subsection if:

11 (a) the first person allows, or continues to allow, another person
12 (the *worker*) to work; and

13 (b) the worker is an unlawful non-citizen.

14 (2) Subsection (1) does not apply if the first person takes reasonable
15 steps at reasonable times to verify that the worker is not an
16 unlawful non-citizen, including (but not limited to) either of the
17 following steps:

18 (a) using a computer system prescribed by the regulations to
19 verify that matter;

20 (b) doing any one or more things prescribed by the regulations.

21 *Offence*

22 (3) A person commits an offence if the person contravenes
23 subsection (1). The physical elements of the offence are set out in
24 that subsection.

25 Penalty: 2 years imprisonment.

26 Note: A defendant bears an evidential burden in relation to the matter in
27 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

28 (4) For the purposes of subsection (3), the fault element for
29 paragraph (1)(b) is knowledge or recklessness by the first person.

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Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 90 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

(6) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

245AC Allowing a lawful non-citizen to work in breach of a work-related condition

(1) A person (the *first person*) contravenes this subsection if:
(a) the first person allows, or continues to allow, another person (the *worker*) to work; and
(b) the worker is a lawful non-citizen; and
(c) the worker holds a visa that is subject to a work-related condition; and
(d) the worker is in breach of the work-related condition solely because of doing the work referred to in paragraph (a).

(2) Subsection (1) does not apply if the first person takes reasonable steps at reasonable times to verify that the worker is not in breach of the work-related condition solely because of doing the work referred to in paragraph (1)(a), including (but not limited to) either of the following steps:
(a) using a computer system prescribed by the regulations to verify that matter;
(b) doing any one or more things prescribed by the regulations.

Offence

(3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: 2 years imprisonment.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

1 (4) For the purposes of subsection (3), the fault element for
2 paragraphs (1)(b), (c) and (d) is knowledge or recklessness by the
3 first person.

4 *Civil penalty provision*

5 (5) A person is liable to a civil penalty if the person contravenes
6 subsection (1).

7 Civil penalty: 90 penalty units.

8 Note: It is not necessary to prove a person's state of mind in proceedings for
9 a civil penalty order (see section 486ZF).

10 (6) A person who wishes to rely on subsection (2) in proceedings for a
11 civil penalty order bears an evidential burden in relation to the
12 matter in that subsection.

13 **245AD Aggravated offences if a person allows, or continues to allow,
14 another person to work**

15 *Allowing an unlawful non-citizen to work*

- 16 (1) A person (the **first person**) commits an offence if:
17 (a) the first person allows, or continues to allow, another person
18 (the **worker**) to work; and
19 (b) the worker is an unlawful non-citizen; and
20 (c) the worker is being exploited; and
21 (d) the first person knows of, or is reckless as to, the
22 circumstances mentioned in paragraphs (b) and (c).

23 Penalty: 5 years imprisonment.

24 Note: See section 245AH for when a person is being **exploited**.

25 *Allowing a lawful non-citizen to work in breach of a work-related
26 condition*

- 27 (2) A person (the **first person**) commits an offence if:
28 (a) the first person allows, or continues to allow, another person
29 (the **worker**) to work; and
30 (b) the worker is a lawful non-citizen; and
31 (c) the worker holds a visa that is subject to a work-related
32 condition; and

- 1 (d) the worker is in breach of the work-related condition solely
2 because of doing the work referred to in paragraph (a); and
3 (e) the worker is being exploited; and
4 (f) the first person knows of, or is reckless as to, the
5 circumstances mentioned in paragraphs (b), (c), (d) and (e).

6 Penalty: 5 years imprisonment.

7 Note: See section 245AH for when a person is being *exploited*.

8 **245AE Referring an unlawful non-citizen for work**

- 9 (1) A person (the *first person*) contravenes this subsection if:
10 (a) the first person operates a service, whether for reward or
11 otherwise, referring other persons to third persons for work;
12 and
13 (b) the first person refers another person (the *prospective*
14 *worker*) to a third person for work; and
15 (c) at the time of the referral, the prospective worker is an
16 unlawful non-citizen.
- 17 (2) Subsection (1) does not apply if the first person takes reasonable
18 steps at reasonable times before the referral to verify that the
19 prospective worker is not an unlawful non-citizen, including (but
20 not limited to) either of the following steps:
21 (a) using a computer system prescribed by the regulations to
22 verify that matter;
23 (b) doing any one or more things prescribed by the regulations.

24 *Offence*

- 25 (3) A person commits an offence if the person contravenes
26 subsection (1). The physical elements of the offence are set out in
27 that subsection.

28 Penalty: 2 years imprisonment.

29 Note: A defendant bears an evidential burden in relation to the matter in
30 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- 31 (4) For the purposes of subsection (3), the fault element for
32 paragraph (1)(c) is knowledge or recklessness by the first person.

1 *Civil penalty provision*

2 (5) A person is liable to a civil penalty if the person contravenes
3 subsection (1).

4 Civil penalty: 90 penalty units.

5 Note: It is not necessary to prove a person's state of mind in proceedings for
6 a civil penalty order (see section 486ZF).

7 (6) A person who wishes to rely on subsection (2) in proceedings for a
8 civil penalty order bears an evidential burden in relation to the
9 matter in that subsection.

10 **245AEA Referring a lawful non-citizen for work in breach of a**
11 **work-related condition**

12 (1) A person (the *first person*) contravenes this subsection if:

13 (a) the first person operates a service, whether for reward or
14 otherwise, referring other persons to third persons for work;
15 and

16 (b) the first person refers another person (the *prospective*
17 *worker*) to a third person for work; and

18 (c) at the time of the referral:

19 (i) the prospective worker is a lawful non-citizen; and

20 (ii) the prospective worker holds a visa that is subject to a
21 work-related condition; and

22 (iii) the prospective worker will be in breach of the
23 work-related condition solely because of doing the work
24 in relation to which he or she is referred.

25 (2) Subsection (1) does not apply if the first person takes reasonable
26 steps at reasonable times before the referral to verify that the
27 prospective worker will not be in breach of the work-related
28 condition solely because of doing the work in relation to which he
29 or she is referred, including (but not limited to) either of the
30 following steps:

31 (a) using a computer system prescribed by the regulations to
32 verify that matter;

33 (b) doing any one or more things prescribed by the regulations.

1 *Offence*

2 (3) A person commits an offence if the person contravenes
3 subsection (1). The physical elements of the offence are set out in
4 that subsection.

5 Penalty: 2 years imprisonment.

6 Note: A defendant bears an evidential burden in relation to the matter in
7 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

8 (4) For the purposes of subsection (3), the fault element for
9 paragraph (1)(c) is knowledge or recklessness by the first person.

10 *Civil penalty provision*

11 (5) A person is liable to a civil penalty if the person contravenes
12 subsection (1).

13 Civil penalty: 90 penalty units.

14 Note: It is not necessary to prove a person's state of mind in proceedings for
15 a civil penalty order (see section 486ZF).

16 (6) A person who wishes to rely on subsection (2) in proceedings for a
17 civil penalty order bears an evidential burden in relation to the
18 matter in that subsection.

19 **245AEB Aggravated offences if a person refers another person to a**
20 **third person for work**

21 *Referring an unlawful non-citizen for work*

22 (1) A person (the *first person*) commits an offence if:

23 (a) the first person operates a service, whether for reward or
24 otherwise, referring other persons to third persons for work;
25 and

26 (b) the first person refers another person (the *prospective*
27 *worker*) to a third person for work; and

28 (c) at the time of the referral, the prospective worker is an
29 unlawful non-citizen; and

30 (d) the prospective worker will be exploited in doing that work,
31 or any other work, for the third person; and

32 (e) the first person knows of, or is reckless as to, the
33 circumstances mentioned in paragraphs (c) and (d).

1 Penalty: 5 years imprisonment.

2 Note: See section 245AH for when a person will be *exploited*.

3 *Referring a lawful non-citizen for work in breach of a work-related*
4 *condition*

5 (2) A person (the *first person*) commits an offence if:

6 (a) the first person operates a service, whether for reward or
7 otherwise, referring other persons to third persons for work;
8 and

9 (b) the first person refers another person (the *prospective*
10 *worker*) to a third person for work; and

11 (c) at the time of the referral:

12 (i) the prospective worker is a lawful non-citizen; and

13 (ii) the prospective worker holds a visa that is subject to a
14 work-related condition; and

15 (iii) the prospective worker will be in breach of the
16 work-related condition solely because of doing the work
17 in relation to which he or she is referred; and

18 (d) the prospective worker will be exploited in doing the work in
19 relation to which he or she is referred, or in doing any other
20 work, for the third person; and

21 (e) the first person knows of, or is reckless as to, the
22 circumstances mentioned in paragraphs (c) and (d).

23 Penalty: 5 years imprisonment.

24 Note: See section 245AH for when a person will be *exploited*.

25 **18 After paragraph 245AG(2)(b)**

26 Insert:

27 (ba) the first person participates in an arrangement, or any
28 arrangement included in a series of arrangements, for the
29 performance of work by the second person for:

30 (i) the first person; or

31 (ii) another participant in the arrangement or any such
32 arrangement; or

33 **19 At the end of subsection 245AG(2)**

34 Add:

35 ; or (e) the prescribed circumstances exist.

1 **20 Sections 245AJ and 245AK**

2 Repeal the sections, substitute:

3 **245AJ Criminal liability of executive officers of bodies corporate**

- 4 (1) An executive officer of a body corporate commits an offence if:
- 5 (a) the body commits an offence (the *work-related offence*)
- 6 against this Subdivision; and
- 7 (b) the officer knew that, or was reckless or negligent as to
- 8 whether, the work-related offence would be committed; and
- 9 (c) the officer was in a position to influence the conduct of the
- 10 body in relation to the work-related offence; and
- 11 (d) the officer failed to take all reasonable steps to prevent the
- 12 work-related offence being committed.
- 13 (2) An offence against subsection (1) is punishable on conviction by a
- 14 pecuniary penalty not exceeding one-fifth of the maximum
- 15 pecuniary penalty that a court could impose on the body corporate
- 16 for the work-related offence.

17 *Reasonable steps to prevent the offence*

- 18 (3) In determining whether the executive officer of the body corporate
- 19 failed to take all reasonable steps to prevent the work-related
- 20 offence being committed by the body, a court must have regard to:
- 21 (a) what action (if any) the officer took towards ensuring that the
- 22 body's employees, agents and contractors had a reasonable
- 23 knowledge and understanding of the requirements to comply
- 24 with this Subdivision, insofar as those requirements affected
- 25 the employees, agents or contractors concerned; and
- 26 (b) what action (if any) the officer took when he or she became
- 27 aware that the body was committing the work-related
- 28 offence.
- 29 (4) Subsection (3) does not limit subsection (1).

30 *Definition*

- 31 (5) In this section:
- 32 *executive officer* of a body corporate means:
- 33 (a) a director of the body corporate; or

- 1 (b) the chief executive officer (however described) of the body
2 corporate; or
3 (c) the chief financial officer (however described) of the body
4 corporate; or
5 (d) the secretary of the body corporate.

6 **245AK Civil liability of executive officers of bodies corporate**

- 7 (1) An executive officer of a body corporate contravenes this
8 subsection if:
9 (a) the body contravenes (the *work-related contravention*) a
10 civil penalty provision in this Subdivision; and
11 (b) the officer knew that, or was reckless or negligent as to
12 whether, the work-related contravention would occur; and
13 (c) the officer was in a position to influence the conduct of the
14 body in relation to the work-related contravention; and
15 (d) the officer failed to take all reasonable steps to prevent the
16 work-related contravention.

17 *Civil penalty provision*

- 18 (2) An executive officer of a body corporate is liable to a civil penalty
19 if the officer contravenes subsection (1).

20 Civil penalty: 90 penalty units.

21 Note: Section 486ZF (which provides that a person's state of mind does not
22 need to be proven in proceedings for a civil penalty order) does not
23 apply in relation to this subsection.

24 *Reasonable steps to prevent the contravention*

- 25 (3) In determining whether the executive officer of the body corporate
26 failed to take all reasonable steps to prevent the work-related
27 contravention by the body, a court must have regard to:
28 (a) what action (if any) the officer took towards ensuring that the
29 body's employees, agents and contractors had a reasonable
30 knowledge and understanding of the requirements to comply
31 with this Subdivision, insofar as those requirements affected
32 the employees, agents or contractors concerned; and
33 (b) what action (if any) the officer took when he or she became
34 aware that the body was engaging in the work-related
35 contravention.

1 (4) Subsection (3) does not limit subsection (1).

2 *Definitions*

3 (5) In this section:

4 ***executive officer*** of a body corporate means:

- 5 (a) a director of the body corporate; or
- 6 (b) the chief executive officer (however described) of the body
7 corporate; or
- 8 (c) the chief financial officer (however described) of the body
9 corporate; or
- 10 (d) the secretary of the body corporate.

11 ***negligent***: an executive officer of a body corporate is ***negligent*** as
12 to whether a work-related contravention would occur if the
13 officer's conduct involves:

- 14 (a) such a great falling short of the standard of care that a
15 reasonable person would exercise in the circumstances; and
- 16 (b) such a high risk that the work-related contravention would
17 occur;

18 that the conduct merits the imposition of a pecuniary penalty.

19 ***reckless***: an executive officer of a body corporate is ***reckless*** as to
20 whether a work-related contravention would occur if:

- 21 (a) the officer is aware of a substantial risk that the work-related
22 contravention would occur; and
- 23 (b) having regard to the circumstances known to the officer, it is
24 unjustifiable to take the risk.

25 **245AL Contravening civil penalty provisions**

26 (1) This section applies if a civil penalty provision in this Subdivision
27 provides that a person contravening another provision of this
28 Subdivision (the ***conduct rule provision***) is liable to a civil penalty.

29 (2) For the purposes of this Act, the person is taken to contravene the
30 civil penalty provision if the person contravenes the conduct rule
31 provision.

1 **245AM Geographical scope of offence and civil penalty provisions**

2 *Offences*

- 3 (1) Section 15.2 of the *Criminal Code* (extended geographical
4 jurisdiction—category B) applies to an offence against this
5 Subdivision.

6 *Contraventions of civil penalty provisions*

- 7 (2) An order must not be made against a person in civil proceedings
8 relating to a contravention by the person of a civil penalty
9 provision in this Subdivision unless:
- 10 (a) the person's conduct that allegedly contravenes the provision
11 occurs:
- 12 (i) wholly or partly in Australia; or
13 (ii) wholly or partly on board an Australian aircraft or an
14 Australian ship; or
- 15 (b) the person's conduct that allegedly contravenes the provision
16 occurs wholly outside Australia and, at the time of the
17 alleged contravention, the person is:
- 18 (i) an Australian citizen; or
19 (ii) a resident of Australia; or
20 (iii) a body corporate incorporated by or under a law of the
21 Commonwealth or of a State or Territory; or
- 22 (c) all of the following conditions are satisfied:
- 23 (i) the person's conduct allegedly contravenes the
24 provision because of section 486ZD (the ***ancillary***
25 ***contravention***);
- 26 (ii) the conduct occurs wholly outside Australia;
- 27 (iii) the conduct constituting the primary contravention to
28 which the ancillary contravention relates occurs, or is
29 intended by the person to occur, wholly or partly in
30 Australia or wholly or partly on board an Australian
31 aircraft or an Australian ship.

32 *Defences relating to contraventions of civil penalty provisions*

- 33 (3) In civil proceedings relating to a primary contravention by a
34 person, it is a defence if:

- 1 (a) the conduct constituting the alleged primary contravention
2 occurs wholly in a foreign country, but not on board an
3 Australian aircraft or an Australian ship; and
4 (b) the person is neither:
5 (i) an Australian citizen; nor
6 (ii) a body corporate incorporated by or under a law of the
7 Commonwealth or of a State or Territory; and
8 (c) there is not in force in:
9 (i) the foreign country where the conduct constituting the
10 alleged primary contravention occurs; or
11 (ii) the part of the foreign country where the conduct
12 constituting the alleged primary contravention occurs;
13 a law of that foreign country, or a law of that part of that
14 foreign country, that provides for a pecuniary or criminal
15 penalty for such conduct.
- 16 (4) In civil proceedings relating to a contravention (the **ancillary**
17 **contravention**) by a person of a civil penalty provision in this
18 Subdivision because of section 486ZD, it is a defence if:
19 (a) the conduct constituting the alleged ancillary contravention
20 occurs wholly in a foreign country, but not on board an
21 Australian aircraft or an Australian ship; and
22 (b) the conduct (the **primary conduct**) constituting the primary
23 contravention to which the ancillary contravention relates
24 occurs, or is intended by the person to occur, wholly in a
25 foreign country, but not on board an Australian aircraft or an
26 Australian ship; and
27 (c) the person is neither:
28 (i) an Australian citizen; nor
29 (ii) a body corporate incorporated by or under a law of the
30 Commonwealth or of a State or Territory; and
31 (d) there is not in force in:
32 (i) the foreign country where the primary conduct occurs or
33 is intended by the person to occur; or
34 (ii) the part of the foreign country where the primary
35 conduct occurs or is intended by the person to occur;
36 a law of that foreign country, or a law of that part of that
37 foreign country, that provides for a pecuniary or criminal
38 penalty for the primary conduct.

1 (5) A defendant bears an evidential burden in relation to the matter in
2 subsection (3) or (4).

3 *Attorney-General's consent needed for certain proceedings*

4 (6) Civil proceedings relating to a contravention of a civil penalty
5 provision in this Subdivision must not be commenced without the
6 Attorney-General's written consent if:

7 (a) the conduct constituting the alleged contravention occurs
8 wholly in a foreign country; and

9 (b) at the time of the alleged contravention, the person alleged to
10 have contravened the provision is neither:

11 (i) an Australian citizen; nor

12 (ii) a body corporate incorporated by or under a law of the
13 Commonwealth or of a State or Territory.

14 *When conduct taken to occur partly in Australia*

15 (7) For the purposes of this section, if a person sends a thing, or causes
16 a thing to be sent:

17 (a) from a point outside Australia to a point in Australia; or

18 (b) from a point in Australia to a point outside Australia;

19 that conduct is taken to have occurred partly in Australia.

20 (8) For the purposes of this section, if a person sends, or causes to be
21 sent, an electronic communication:

22 (a) from a point outside Australia to a point in Australia; or

23 (b) from a point in Australia to a point outside Australia;

24 that conduct is taken to have occurred partly in Australia.

25 *Definitions*

26 (9) In this section:

27 *Australian aircraft* has the same meaning as in the *Criminal Code*.

28 *Australian ship* has the same meaning as in the *Criminal Code*.

29 *electronic communication* has the same meaning as in the
30 *Criminal Code*.

31 *foreign country* has the same meaning as in the *Criminal Code*.

1 *point* has the same meaning as in section 16.2 of the *Criminal*
2 *Code*.

3 *primary contravention* means a contravention of a civil penalty
4 provision in this Subdivision other than because of section 486ZD.

5 *resident of Australia* has the same meaning as in the *Criminal*
6 *Code*.

7 **245AN Charge and trial for an aggravated offence**

8 (1) If the prosecution intends to prove an offence against subsection
9 245AD(1) or (2), the charge must allege that the worker referred to
10 in that subsection has been exploited.

11 (2) If the prosecution intends to prove an offence against subsection
12 245AEB(1) or (2), the charge must allege that the prospective
13 worker referred to in that subsection has been or will be exploited:

- 14 (a) in doing the work in relation to which the prospective worker
15 was referred; or
16 (b) in doing other work for the person to whom the prospective
17 worker was referred.

18 (3) On a trial for an offence against section 245AD, the trier of fact
19 may find the defendant not guilty of that offence but guilty of an
20 offence against section 245AB or 245AC if:

- 21 (a) the trier of fact is not satisfied that the defendant is guilty of
22 an offence against section 245AD; and
23 (b) the trier of fact is satisfied that the defendant is guilty of an
24 offence against section 245AB or 245AC; and
25 (c) the defendant has been accorded procedural fairness in
26 relation to that finding of guilt.

27 (4) On a trial for an offence against section 245AEB, the trier of fact
28 may find the defendant not guilty of that offence but guilty of an
29 offence against section 245AE or 245AEA if:

- 30 (a) the trier of fact is not satisfied that the defendant is guilty of
31 an offence against section 245AEB; and
32 (b) the trier of fact is satisfied that the defendant is guilty of an
33 offence against section 245AE or 245AEA; and
34 (c) the defendant has been accorded procedural fairness in
35 relation to that finding of guilt.

1 **245AO Treatment of partnerships**

- 2 (1) This Subdivision, and any other provision of this Act to the extent
3 that it relates to this Subdivision, apply to a partnership as if it were
4 a person, but with the changes set out in this section.
- 5 (2) An offence against this Subdivision that would otherwise be
6 committed by a partnership is taken to have been committed by
7 each partner in the partnership, at the time the offence is
8 committed, who:
9 (a) did the relevant act; or
10 (b) aided, abetted, counselled or procured the relevant act; or
11 (c) was in any way knowingly concerned in, or party to, the
12 relevant act (whether directly or indirectly or whether by any
13 act of the partner).
- 14 (3) A civil penalty provision in this Subdivision that would otherwise
15 be contravened by a partnership is taken to have been contravened
16 by each partner in the partnership, at the time of the conduct
17 constituting the contravention, who:
18 (a) engaged in the conduct; or
19 (b) aided, abetted, counselled or procured the conduct; or
20 (c) was in any way knowingly concerned in, or party to, the
21 conduct (whether directly or indirectly or whether by any act
22 of the partner).

23 **245AP Treatment of unincorporated associations**

- 24 (1) This Subdivision, and any other provision of this Act to the extent
25 that it relates to this Subdivision, apply to an unincorporated
26 association as if it were a person, but with the changes set out in
27 this section.
- 28 (2) An offence against this Subdivision that would otherwise be
29 committed by an unincorporated association is taken to have been
30 committed by each member of the association's committee of
31 management, at the time the offence is committed, who:
32 (a) did the relevant act; or
33 (b) aided, abetted, counselled or procured the relevant act; or
34 (c) was in any way knowingly concerned in, or party to, the
35 relevant act (whether directly or indirectly or whether by any
36 act of the member).

- 1 (3) A civil penalty provision in this Subdivision that would otherwise
2 be contravened by an unincorporated association is taken to have
3 been contravened by each member of the association’s committee
4 of management, at the time of the conduct constituting the
5 contravention, who:
6 (a) engaged in the conduct; or
7 (b) aided, abetted, counselled or procured the conduct; or
8 (c) was in any way knowingly concerned in, or party to, the
9 conduct (whether directly or indirectly or whether by any act
10 of the member).

11 **21 At the end of paragraphs 271(1)(a) to (g)**

12 Add “and”.

13 **22 At the end of subsection 271(1)**

14 Add:

15 ; and (m) a certificate signed by an officer stating:

- 16 (i) whether or not a specified person used a specified
17 computer system at a specified time, or during a
18 specified period, to obtain information about another
19 specified person; and
20 (ii) if the specified computer system was so used—the
21 information about the other specified person that was
22 provided by the system to the user at that time or during
23 that period;

24 is prima facie evidence of the matters stated in the certificate.

25 **23 Subsection 271(4) (subparagraph (a)(i) of the definition of**
26 ***migration proceedings*)**

27 After “against this Act”, insert “or a contravention of a civil penalty
28 provision”.

29 **24 Part 8D**

30 Repeal the Part, substitute:

1 **Part 8D—Civil penalties**

2 **Division 1—Obtaining a civil penalty order**

3 **486R Civil penalty orders**

4 *Application for order*

- 5 (1) The Minister may apply to an eligible court for an order that a
6 person, who is alleged to have contravened a civil penalty
7 provision, pay the Commonwealth a pecuniary penalty.
- 8 (2) The Minister must make the application within 6 years of the
9 alleged contravention.

10 *Eligible court may order person to pay pecuniary penalty*

- 11 (3) If the eligible court is satisfied that the person has contravened a
12 civil penalty provision, the court may order the person to pay to the
13 Commonwealth such pecuniary penalty for the contravention as the
14 court determines to be appropriate.

15 Note: Subsection (5) sets out the maximum penalty that the eligible court
16 may order the person to pay.

- 17 (4) An order under subsection (3) is a ***civil penalty order***.

18 *Determining pecuniary penalty*

- 19 (5) The pecuniary penalty must not be more than:
20 (a) if the person is a body corporate—5 times the amount of the
21 pecuniary penalty specified for the civil penalty provision;
22 and
23 (b) otherwise—the amount of the pecuniary penalty specified for
24 the civil penalty provision.
- 25 (6) In determining the pecuniary penalty, the eligible court must take
26 into account all relevant matters, including:
27 (a) the nature and extent of the contravention; and
28 (b) the nature and extent of any loss or damage suffered because
29 of the contravention; and
30 (c) the circumstances in which the contravention took place; and

- 1 (d) whether the Department has taken any administrative action
2 against the person in relation to the conduct constituting the
3 contravention or any similar conduct; and
4 (e) whether the person has been issued with an infringement
5 notice under regulations made for the purposes of
6 section 506A in relation to the conduct constituting the
7 contravention or any similar conduct; and
8 (f) whether the person has previously been found by a court in
9 proceedings under this Act to have engaged in any similar
10 conduct.

11 **486S Additional rules relating to the sponsorship civil penalty**
12 **provisions**

- 13 (1) This section applies if an application for a civil penalty order
14 against a person is made to an eligible court in relation to an
15 alleged contravention of a civil penalty provision in Division 3A of
16 Part 2.

17 *Engaging in similar conduct*

- 18 (2) For the purposes of subsection 486R(6), the person is taken to have
19 engaged in similar conduct if the person has failed to satisfy a
20 sponsorship obligation that is different from the sponsorship
21 obligation to which the application relates.
22 (3) Subsection (2) does not limit the circumstances in which a person
23 may be found to have engaged in similar conduct.

24 *Order to pay a required amount*

- 25 (4) If, when determining the application, it appears to the eligible court
26 that:
27 (a) an amount of a kind prescribed in the regulations made for
28 purposes of subsection 140S(1) is required to be paid by the
29 person to the Commonwealth, a State or Territory or another
30 person; and
31 (b) the amount remains unpaid after the time for payment; and
32 (c) proceedings to recover the amount have not been brought
33 under section 140S;
34 the court may order that the amount be paid to the Commonwealth,
35 State, Territory or other person (as the case may be).

1 Note: Section 140S allows a person to bring proceedings to recover an
2 amount owed if the eligible court does not make an order under this
3 subsection.

- 4 (5) If the eligible court makes an order under subsection (4):
5 (a) an application may be made under subsection 140SA(1), and
6 an order made under subsection 140SA(2), as if proceedings
7 for a civil penalty order were proceedings under
8 section 140S; and
9 (b) section 140SB applies as if the amount ordered to be paid
10 under subsection (4) of this section were a judgement debt
11 under a judgement of an eligible court under section 140S.

12 **486T Civil enforcement of penalty**

- 13 (1) A pecuniary penalty is a debt payable to the Commonwealth.
14 (2) The Commonwealth may enforce a civil penalty order as if it were
15 an order made in civil proceedings against the person to recover a
16 debt due by the person. The debt arising from the order is taken to
17 be a judgement debt.

18 **486U Conduct contravening more than one civil penalty provision**

- 19 (1) If conduct constitutes a contravention of 2 or more civil penalty
20 provisions, proceedings may be instituted under this Part against a
21 person in relation to the contravention of any one or more of those
22 provisions.
23 (2) However, the person is not liable to more than one pecuniary
24 penalty under this Part in relation to the same conduct.

25 **486V Multiple contraventions**

- 26 (1) An eligible court may make a single civil penalty order against a
27 person for multiple contraventions of a civil penalty provision if
28 proceedings for the contraventions are founded on the same facts,
29 or if the contraventions form, or are part of, a series of
30 contraventions of the same or a similar character.
31 (2) However, the penalty must not exceed the sum of the maximum
32 penalties that could be ordered if a separate penalty were ordered
33 for each of the contraventions.

1 **486W Proceedings may be heard together**

2 An eligible court may direct that 2 or more proceedings for civil
3 penalty orders are to be heard together.

4 **486X Civil evidence and procedure rules for civil penalty orders**

5 An eligible court must apply the rules of evidence and procedure
6 for civil matters when hearing proceedings for a civil penalty
7 order.

8 **486Y Requirement for persons to assist in applications for civil
9 penalty orders**

- 10 (1) A person commits an offence if:
- 11 (a) the Secretary requests, in writing, the person to give all
12 reasonable assistance in connection with an application for a
13 civil penalty order; and
14 (b) the person fails to comply with the request.
- 15 Penalty: 10 penalty units.
- 16 (2) A request under subsection (1) is not a legislative instrument.
- 17 (3) The Secretary can request a person to assist under subsection (1)
18 only if:
- 19 (a) it appears to the Secretary that the person is unlikely to have:
- 20 (i) contravened the civil penalty provision to which the
21 application relates; or
22 (ii) committed an offence constituted by the same, or
23 substantially the same, conduct as the conduct to which
24 the application relates; and
25 (b) the Secretary suspects or believes that the person can give
26 information relevant to the application.
- 27 (4) The Secretary cannot request a person to assist under
28 subsection (1) if the person is or has been a lawyer for the person
29 suspected of contravening the civil penalty provision to which the
30 application relates.
- 31 (5) An eligible court may order a person to comply with a request
32 under subsection (1) in a specified way. Only the Secretary may
33 apply to the eligible court for an order under this subsection.

- 1 (6) For the purposes of this section, it does not matter whether the
2 application for the civil penalty order has actually been made.

3 **Division 2—Civil proceedings and criminal proceedings**

4 **486Z Civil proceedings after criminal proceedings**

5 An eligible court may not make a civil penalty order against a
6 person for a contravention of a civil penalty provision if the person
7 has been convicted of an offence constituted by conduct that is the
8 same, or substantially the same, as the conduct constituting the
9 contravention.

10 **486ZA Criminal proceedings during civil proceedings**

- 11 (1) Proceedings for a civil penalty order against a person for a
12 contravention of a civil penalty provision are stayed if:
13 (a) criminal proceedings are commenced or have already been
14 commenced against the person for an offence; and
15 (b) the offence is constituted by conduct that is the same, or
16 substantially the same, as the conduct alleged to constitute
17 the contravention.
- 18 (2) The proceedings for the civil penalty order may be resumed if the
19 person is not convicted of the offence. Otherwise, the proceedings
20 are dismissed.

21 **486ZB Criminal proceedings after civil proceedings**

22 Criminal proceedings may be commenced against a person for
23 conduct that is the same, or substantially the same, as conduct that
24 would constitute a contravention of a civil penalty provision
25 regardless of whether a civil penalty order has been made against
26 the person in relation to the contravention.

27 **486ZC Evidence given in civil proceedings not admissible in**
28 **criminal proceedings**

- 29 (1) Evidence of information given, or evidence of production of
30 documents, by an individual is not admissible in criminal
31 proceedings against the individual if:

- 1 (a) the individual previously gave the evidence or produced the
2 documents in proceedings for a civil penalty order against the
3 individual for an alleged contravention of a civil penalty
4 provision (whether or not the order was made); and
5 (b) the conduct alleged to constitute the offence is the same, or
6 substantially the same, as the conduct alleged to constitute
7 the contravention.
- 8 (2) However, subsection (1) does not apply to criminal proceedings in
9 relation to the falsity of the evidence given by the individual in the
10 proceedings for the civil penalty order.

11 **Division 3—Miscellaneous**

12 **486ZD Ancillary contravention of civil penalty provisions**

- 13 (1) A person must not:
- 14 (a) attempt to contravene a civil penalty provision; or
15 (b) aid, abet, counsel or procure a contravention of a civil
16 penalty provision; or
17 (c) induce (by threats, promises or otherwise) a contravention of
18 a civil penalty provision; or
19 (d) be in any way, directly or indirectly, knowingly concerned in,
20 or party to, a contravention of a civil penalty provision; or
21 (e) conspire with others to effect a contravention of a civil
22 penalty provision.

23 Note: Section 486ZF (which provides that a person's state of mind does not
24 need to be proven in proceedings for a civil penalty order) does not
25 apply in relation to this section.

26 *Civil penalty*

- 27 (2) A person who contravenes subsection (1) in relation to a civil
28 penalty provision is taken to have contravened the provision.

29 **486ZE Mistake of fact**

- 30 (1) A person is not liable to have a civil penalty order made against the
31 person for a contravention of a civil penalty provision if:
32 (a) at or before the time of the conduct constituting the
33 contravention, the person:

- 1 (i) considered whether or not facts existed; and
2 (ii) was under a mistaken but reasonable belief about those
3 facts; and
4 (b) had those facts existed, the conduct would not have
5 constituted a contravention of the civil penalty provision.
- 6 (2) For the purposes of subsection (1), a person may be regarded as
7 having considered whether or not facts existed if:
8 (a) the person had considered, on a previous occasion, whether
9 those facts existed in the circumstances surrounding that
10 occasion; and
11 (b) the person honestly and reasonably believed that the
12 circumstances surrounding the present occasion were the
13 same, or substantially the same, as those surrounding the
14 previous occasion.
- 15 (3) A person who wishes to rely on subsection (1) or (2) in
16 proceedings for a civil penalty order bears an evidential burden in
17 relation to that matter.

18 **486ZF State of mind**

- 19 (1) In proceedings for a civil penalty order against a person for a
20 contravention of a civil penalty provision (other than subsection
21 245AK(2)), it is not necessary to prove:
22 (a) the person's intention; or
23 (b) the person's knowledge; or
24 (c) the person's recklessness; or
25 (d) the person's negligence; or
26 (e) any other state of mind of the person.
- 27 (2) Subsection (1) does not apply to the extent that the proceedings
28 relate to a contravention of subsection 486ZD(1) (which is about
29 ancillary contraventions of civil penalty provisions).
- 30 (3) Subsection (1) of this section does not affect the operation of
31 section 486ZE (which is about mistake of fact).

32 **486ZG Civil double jeopardy**

33 If a person is ordered to pay a pecuniary penalty for contravening a
34 civil penalty provision in respect of particular conduct, the person

1 is not liable to a pecuniary penalty under some other provision of a
2 law of the Commonwealth in respect of that conduct.

3 **Part 8E—Investigation powers relating to**
4 **work-related offences and provisions**

5 **Division 1—Preliminary**

6 **487A Definitions**

7 In this Part:

8 *evidential material* means:

- 9 (a) in relation to a work-related offence:
- 10 (i) a thing with respect to which the offence has been
11 committed or is reasonably suspected of having been
12 committed; or
- 13 (ii) a thing that it is reasonably suspected will afford
14 evidence as to the commission of the offence; or
- 15 (iii) a thing that is reasonably suspected of being intended to
16 be used for the purpose of committing the offence; or
- 17 (b) in relation to a contravention of a work-related provision:
- 18 (i) a thing with respect to which the provision has been
19 contravened or is reasonably suspected of having been
20 contravened; or
- 21 (ii) a thing that it is reasonably suspected will afford
22 evidence as to the contravention of the provision; or
- 23 (iii) a thing that is reasonably suspected of being intended to
24 be used for the purpose of contravening the provision.

25 *issuing officer* means:

- 26 (a) a magistrate; or
27 (b) a Federal Magistrate; or
28 (c) a Judge of the Federal Court.

29 Note: For conferral of powers on an issuing officer, see section 487ZH.

30 *occupier*, in relation to premises comprising a vehicle or vessel,
31 means the person apparently in charge of the vehicle or vessel.

32 *person assisting* has the meaning given by section 487H.

- 1 ***premises*** includes the following:
2 (a) a structure, building, vehicle or vessel;
3 (b) a place (whether or not enclosed or built on);
4 (c) a part of a thing referred to in paragraph (a) or (b).

5 ***related provision*** means a work-related offence or work-related
6 provision.

7 ***search powers*** has the meaning given by sections 487E, 487F and
8 487G.

9 ***search warrant*** means:

- 10 (a) a warrant issued by an issuing officer under section 487ZC;
11 or
12 (b) a warrant signed by an issuing officer under section 487ZD.

13 ***work-related offence*** means:

- 14 (a) an offence against Subdivision C of Division 12 of Part 2; or
15 (b) an offence against section 6 of the *Crimes Act 1914* that
16 relates to an offence against that Subdivision; or
17 (c) an ancillary offence (within the meaning of the *Criminal*
18 *Code*) that is, or relates to, an offence against that
19 Subdivision.

20 ***work-related provision*** means a civil penalty provision in
21 Subdivision C of Division 12 of Part 2.

22 **Division 2—Requiring persons to give information or** 23 **produce documents**

24 **487B Secretary may require a person to give information or produce** 25 **a document**

- 26 (1) If the Secretary has reason to believe that a person has information
27 or a document that is relevant to:
28 (a) a possible work-related offence; or
29 (b) a possible contravention of a work-related provision;
30 the Secretary may, by written notice given to the person, require
31 the person to give the information, or to produce the document, to
32 an authorised officer.

- 1 that relates to Subdivision C of Division 12 of Part 2 of this
2 Act); or
3 (e) in civil proceedings (other than proceedings for a civil
4 penalty order for an alleged contravention of a work-related
5 provision).

6 **Division 3—Search warrants**

7 **Subdivision A—Search powers**

8 **487D Authorised officer may enter premises by consent or under a** 9 **search warrant**

- 10 (1) If an authorised officer reasonably suspects that there may be
11 evidential material on any premises, the authorised officer may:
12 (a) enter the premises; and
13 (b) exercise the search powers.
- 14 (2) However, an authorised officer is not authorised to enter the
15 premises unless:
16 (a) the occupier of the premises has consented to the entry and
17 the authorised officer has shown his or her identity card if
18 required by the occupier; or
19 (b) the entry is made under a search warrant.

20 Note: If entry to the premises is with the occupier's consent, the authorised
21 officer must leave the premises if the consent ceases to have effect
22 (see section 487L).

23 **487E Search powers of authorised officers**

24 The following are the *search powers* that an authorised officer may
25 exercise in relation to premises under section 487D:

- 26 (a) if entry to the premises is with the occupier's consent—the
27 power to search the premises and any thing on the premises
28 for the evidential material the authorised officer reasonably
29 suspects may be on the premises;
30 (b) if entry to the premises is under a search warrant:
31 (i) the power to search the premises, and any thing on the
32 premises, for the kind of evidential material specified in
33 the warrant; and

- 1 (ii) the power to seize evidential material of that kind if the
2 authorised officer finds it on the premises;
- 3 (c) the power to inspect, examine, take measurements of,
4 conduct tests on or take samples of evidential material
5 referred to in paragraph (a) or (b);
- 6 (d) the power to make any still or moving image or any
7 recording of the premises or evidential material referred to in
8 paragraph (a) or (b);
- 9 (e) the power to take onto the premises such equipment and
10 materials as the authorised officer requires for the purpose of
11 exercising powers in relation to the premises;
- 12 (f) the powers set out in subsections 487F(1) and (2) and
13 section 487G.

14 **487F Powers relating to electronic equipment**

- 15 (1) The *search powers* include the power to operate electronic
16 equipment on the premises if the authorised officer reasonably
17 suspects that:
- 18 (a) the equipment; or
19 (b) a disk, tape or other storage device that:
20 (i) is on the premises; and
21 (ii) can be used with the equipment or is associated with it;
22 contains evidential material referred to in paragraph 487E(a) or (b).
- 23 (2) The *search powers* include the following powers in relation to
24 evidential material described in subsection (1) found in the
25 exercise of the power under that subsection:
- 26 (a) if entry to the premises is under a search warrant—the power
27 to seize the equipment and the disk, tape or other storage
28 device referred to in that subsection;
- 29 (b) the power to operate electronic equipment on the premises to
30 put the evidential material in documentary form and remove
31 the documents so produced from the premises;
- 32 (c) the power to operate electronic equipment on the premises to
33 transfer the evidential material to a disk, tape or other storage
34 device that:
35 (i) is brought to the premises for the exercise of the power;
36 or

1 (ii) is on the premises and the use of which for that purpose
2 has been agreed to in writing by the occupier of the
3 premises;
4 and remove the disk, tape or other storage device from the
5 premises.

6 (3) An authorised officer may operate electronic equipment as
7 mentioned in subsection (1) or (2) only if the authorised officer
8 reasonably believes that the operation of the equipment can be
9 carried out without damage to the equipment.

10 Note: For compensation for damage to electronic equipment, see
11 section 487T.

12 (4) An authorised officer may seize equipment or a disk, tape or other
13 storage device as mentioned in paragraph (2)(a) only if:
14 (a) it is not practicable to put the evidential material in
15 documentary form as mentioned in paragraph (2)(b) or to
16 transfer the evidential material as mentioned in
17 paragraph (2)(c); or
18 (b) possession of the equipment or the disk, tape or other storage
19 device by the occupier could constitute an offence against a
20 law of the Commonwealth.

21 **487G Seizing evidence of the contravention of related provisions etc.**

22 (1) This section applies if an authorised officer enters premises under a
23 search warrant to search for evidential material.

24 (2) The *search powers* include seizing a thing that is not evidential
25 material of the kind specified in the warrant if:
26 (a) in the course of searching for the kind of evidential material
27 specified in the warrant, the authorised officer finds the
28 thing; and
29 (b) the authorised officer reasonably believes that:
30 (i) a related provision has been contravened with respect to
31 the thing; or
32 (ii) the thing is evidence of the contravention of a related
33 provision; or
34 (iii) the thing is intended to be used for the purpose of
35 contravening a related provision; and

- 1 (c) the authorised officer reasonably believes that it is necessary
2 to seize the thing in order to prevent its concealment, loss or
3 destruction.

4 **487H Persons assisting authorised officers**

5 *Authorised officers may be assisted by other persons*

- 6 (1) An authorised officer may be assisted by other persons in
7 exercising powers or performing functions or duties under this
8 Division, if that assistance is necessary and reasonable. A person
9 giving such assistance is a *person assisting* the authorised officer.

10 *Powers of a person assisting the authorised officer*

- 11 (2) A person assisting the authorised officer:
12 (a) may enter the premises; and
13 (b) may exercise powers and perform functions and duties under
14 this Division in relation to evidential material; and
15 (c) must do so in accordance with a direction given to the person
16 assisting by the authorised officer.
- 17 (3) A power exercised by a person assisting the authorised officer as
18 mentioned in subsection (2) is taken for all purposes to have been
19 exercised by the authorised officer.
- 20 (4) A function or duty performed by a person assisting the authorised
21 officer as mentioned in subsection (2) is taken for all purposes to
22 have been performed by the authorised officer.
- 23 (5) If a direction is given under paragraph (2)(c) in writing, the
24 direction is not a legislative instrument.

25 **487J Use of force in executing a search warrant**

26 In executing a search warrant, an authorised officer, or a person
27 assisting an authorised officer, may use such force against things as
28 is necessary and reasonable in the circumstances.

1 **Subdivision B—Powers of authorised officers to ask questions**
2 **and seek production of documents**

3 **487K Authorised officer may ask questions and seek production of**
4 **documents**

5 *Entry with consent*

- 6 (1) If an authorised officer is authorised to enter premises because the
7 occupier of the premises consented to the entry, the authorised
8 officer may ask the occupier to:
- 9 (a) answer any questions relating to the reasons for the
10 authorised officer entering the premises that are put by the
11 authorised officer; and
 - 12 (b) produce any document relating to the reasons for the
13 authorised officer entering the premises that is requested by
14 the authorised officer.

15 *Entry under a search warrant*

- 16 (2) If an authorised officer is authorised to enter premises by a search
17 warrant, the authorised officer may require any person on the
18 premises to:
- 19 (a) answer any questions relating to the reasons for the
20 authorised officer entering the premises that are put by the
21 authorised officer; and
 - 22 (b) produce any document relating to the reasons for the
23 authorised officer entering the premises that is requested by
24 the authorised officer.

25 *Offence*

- 26 (3) A person commits an offence if:
- 27 (a) the person is subject to a requirement under subsection (2);
 - 28 and
 - 29 (b) the person fails to comply with the requirement.

30 Penalty for contravention of this subsection: 30 penalty units.

1 **Subdivision C—Obligations and incidental powers of**
2 **authorised officers**

3 **487L Consent**

- 4 (1) Before obtaining the consent of an occupier of premises for the
5 purposes of paragraph 487D(2)(a), an authorised officer must
6 inform the occupier that the occupier may refuse consent.
- 7 (2) A consent has no effect unless the consent is voluntary.
- 8 (3) A consent may be expressed to be limited to entry during a
9 particular period. If so, the consent has effect for that period unless
10 the consent is withdrawn before the end of that period.
- 11 (4) A consent that is not limited as mentioned in subsection (3) has
12 effect until the consent is withdrawn.
- 13 (5) If an authorised officer has entered premises because of the consent
14 of the occupier of the premises, the authorised officer, and any
15 person assisting the authorised officer, must leave the premises if
16 the consent ceases to have effect.

17 **487M Announcement before entry under search warrant**

- 18 (1) Before entering premises under a search warrant, an authorised
19 officer must:
- 20 (a) announce that he or she is authorised to enter the premises;
21 and
- 22 (b) show his or her identity card to the occupier of the premises,
23 or to another person who apparently represents the occupier,
24 if the occupier or other person is present at the premises; and
- 25 (c) give any person at the premises an opportunity to allow entry
26 to the premises.
- 27 (2) However, an authorised officer is not required to comply with
28 subsection (1) if the authorised officer reasonably believes that
29 immediate entry to the premises is required:
- 30 (a) to ensure the safety of a person; or
31 (b) to ensure that the effective execution of the search warrant is
32 not frustrated.
- 33 (3) If:

- 1 (a) an authorised officer does not comply with subsection (1)
2 because of subsection (2); and
3 (b) the occupier of the premises, or another person who
4 apparently represents the occupier, is present at the premises;
5 the authorised officer must show his or her identity card to the
6 occupier or other person, as soon as practicable after entering the
7 premises.

8 **487N Authorised officer to be in possession of search warrant**

9 An authorised officer who is executing a search warrant must be in
10 possession of:

- 11 (a) the search warrant issued by the issuing officer under
12 section 487ZC, or a copy of the warrant as so issued; or
13 (b) the form of search warrant completed under subsection
14 487ZD(6), or a copy of the form as so completed.

15 **487P Details of search warrant etc. to be given to occupier**

- 16 (1) An authorised officer must comply with subsection (2) if:
17 (a) a search warrant is being executed in relation to premises;
18 and
19 (b) the occupier of the premises, or another person who
20 apparently represents the occupier, is present at the premises.
- 21 (2) The authorised officer must, as soon as practicable:
22 (a) do one of the following:
23 (i) if the search warrant was issued under section 487ZC—
24 make a copy of the warrant available to the occupier or
25 other person (which need not include the signature of
26 the issuing officer who issued it);
27 (ii) if the search warrant was signed under section 487ZD—
28 make a copy of the form of warrant completed under
29 subsection 487ZD(6) available to the occupier or other
30 person; and
31 (b) inform the occupier or other person of the rights and
32 responsibilities of the occupier or other person under
33 Subdivision D.

1 **487Q Completing execution of search warrant after temporary**
2 **cessation**

- 3 (1) This section applies if an authorised officer, and all persons
4 assisting, who are executing a search warrant in relation to
5 premises temporarily cease its execution and leave the premises.
- 6 (2) The authorised officer, and persons assisting, may complete the
7 execution of the search warrant if:
8 (a) the warrant is still in force; and
9 (b) the authorised officer and persons assisting are absent from
10 the premises:
11 (i) for not more than 1 hour; or
12 (ii) if there is an emergency situation, for not more than 12
13 hours or such longer period as allowed by an issuing
14 officer under subsection (5); or
15 (iii) for a longer period if the occupier of the premises
16 consents in writing.

17 *Application for extension in emergency situation*

- 18 (3) An authorised officer, or person assisting, may apply to an issuing
19 officer for an extension of the 12-hour period mentioned in
20 subparagraph (2)(b)(ii) if:
21 (a) there is an emergency situation; and
22 (b) the authorised officer or person assisting reasonably believes
23 that the authorised officer and the persons assisting will not
24 be able to return to the premises within that period.
- 25 (4) If it is practicable to do so, before making the application, the
26 authorised officer or person assisting must give notice to the
27 occupier of the premises of his or her intention to apply for an
28 extension.

29 *Extension in emergency situation*

- 30 (5) An issuing officer may extend the period during which the
31 authorised officer and persons assisting may be away from the
32 premises if:
33 (a) an application is made under subsection (3); and

- 1 (b) the issuing officer is satisfied, by information on oath or
2 affirmation, that there are exceptional circumstances that
3 justify the extension; and
4 (c) the extension would not result in the period ending after the
5 search warrant ceases to be in force.

6 **487R Completing execution of search warrant stopped by court**
7 **order**

8 An authorised officer, and any persons assisting, may complete the
9 execution of a search warrant that has been stopped by an order of
10 a court if:

- 11 (a) the order is later revoked or reversed on appeal; and
12 (b) the warrant is still in force when the order is revoked or
13 reversed.

14 **487S Expert assistance to operate electronic equipment**

- 15 (1) This section applies if an authorised officer enters premises under a
16 search warrant.

17 *Securing equipment*

- 18 (2) The authorised officer may do whatever is necessary to secure any
19 electronic equipment that is on premises if the authorised officer
20 reasonably believes that:
21 (a) there is on the premises evidential material of the kind
22 specified in the search warrant; and
23 (b) that evidential material may be accessible by operating the
24 equipment; and
25 (c) expert assistance is required to operate the equipment; and
26 (d) the evidential material may be destroyed, altered or otherwise
27 interfered with, if the authorised officer does not take action
28 under this subsection.

29 The equipment may be secured by locking it up, placing a guard or
30 any other means.

- 31 (3) The authorised officer must give notice to the occupier of the
32 premises, or another person who apparently represents the
33 occupier, of:

- 1 (a) the authorised officer's intention to secure the equipment;
2 and
3 (b) the fact that the equipment may be secured for up to 24
4 hours.

5 *Period equipment may be secured*

- 6 (4) The equipment may be secured until the earlier of the following
7 happens:
8 (a) the 24-hour period ends;
9 (b) the equipment has been operated by the expert.

10 Note: For compensation for damage to electronic equipment, see
11 section 487T.

12 *Extensions*

- 13 (5) The authorised officer may apply to an issuing officer for an
14 extension of the 24-hour period if the authorised officer reasonably
15 believes that the equipment needs to be secured for longer than that
16 period.
- 17 (6) Before making the application, the authorised officer must give
18 notice to the occupier of the premises, or another person who
19 apparently represents the occupier, of the authorised officer's
20 intention to apply for an extension. The occupier or other person is
21 entitled to be heard in relation to that application.
- 22 (7) The provisions of this Division relating to the issue of search
23 warrants apply, with such modifications as are necessary, to the
24 issue of an extension.
- 25 (8) The 24-hour period may be extended more than once.

26 **487T Compensation for damage to electronic equipment**

- 27 (1) This section applies if:
28 (a) as a result of electronic equipment being operated as
29 mentioned in this Division:
30 (i) damage is caused to the equipment; or
31 (ii) the data recorded on the equipment is damaged; or
32 (iii) programs associated with the use of the equipment, or
33 with the use of the data, are damaged or corrupted; and

- 1 (b) the damage or corruption occurs because:
2 (i) insufficient care was exercised in selecting the person
3 who was to operate the equipment; or
4 (ii) insufficient care was exercised by the person operating
5 the equipment.
- 6 (2) The Commonwealth must pay the owner of the equipment, or the
7 user of the data or programs, such reasonable compensation for the
8 damage or corruption as the Commonwealth and the owner or user
9 agree on.
- 10 (3) However, if the owner or user and the Commonwealth fail to
11 agree, the owner or user may institute proceedings in a court of
12 competent jurisdiction for such reasonable amount of
13 compensation as the court determines.
- 14 (4) In determining the amount of compensation payable, regard is to
15 be had to whether the occupier of the premises, or the occupier's
16 employees or agents, if they were available at the time, provided
17 any appropriate warning or guidance on the operation of the
18 equipment.
- 19 (5) In this section:
20 *damage*, in relation to data, includes damage by erasure of data or
21 addition of other data.

22 **Subdivision D—Occupier's rights and responsibilities**

23 **487U Occupier entitled to observe execution of search warrant**

- 24 (1) The occupier, or another person who apparently represents the
25 occupier, is entitled to observe the execution of a search warrant if
26 the occupier or other person is present at the premises while the
27 warrant is being executed.
- 28 (2) The right to observe the execution of the search warrant ceases if
29 the occupier or other person impedes that execution.
- 30 (3) This section does not prevent the execution of the search warrant in
31 2 or more areas of the premises at the same time.

1 **487V Occupier to provide authorised officer with facilities and**
2 **assistance**

- 3 (1) The occupier of premises to which a search warrant relates, or
4 another person who apparently represents the occupier, must
5 provide:
6 (a) an authorised officer executing the warrant; and
7 (b) any person assisting the authorised officer;
8 with all reasonable facilities and assistance for the effective
9 exercise of their powers, and the effective performance of their
10 functions and duties.

11 *Offence*

- 12 (2) A person commits an offence if:
13 (a) the person is subject to subsection (1); and
14 (b) the person fails to comply with that subsection.

15 Penalty for contravention of this subsection: 30 penalty units.

16 **Subdivision E—General provisions relating to seizure**

17 **487W Copies of seized things to be provided**

- 18 (1) This section applies if:
19 (a) a search warrant is being executed in relation to premises;
20 and
21 (b) an authorised officer seizes one or more of the following
22 from the premises under this Division:
23 (i) a document, film, computer file or other thing that can
24 be readily copied;
25 (ii) a storage device, the information in which can be
26 readily copied.
- 27 (2) The occupier of the premises, or another person who apparently
28 represents the occupier and who is present when the search warrant
29 is executed, may request the authorised officer to give a copy of
30 the thing or the information to the occupier or other person.
- 31 (3) The authorised officer must comply with such a request as soon as
32 practicable after the seizure.

- 1 (4) However, the authorised officer is not required to comply with
2 such a request if possession of the document, film, computer file,
3 thing or information by the occupier or other person could
4 constitute an offence against a law of the Commonwealth.

5 **487X Receipts for seized things**

- 6 (1) An authorised officer must provide a receipt for a thing that is
7 seized under this Division.
8 (2) One receipt may cover 2 or more things that are seized.

9 **487Y Return of seized things**

- 10 (1) The Secretary must take reasonable steps to return a thing seized
11 under this Division when the earliest of the following happens:
12 (a) the reason for the thing's seizure no longer exists;
13 (b) it is decided that the thing is not to be used in evidence;
14 (c) the period of 60 days after the thing's seizure ends.

15 Note: See subsections (2) and (3) for exceptions to this rule.

16 *Exceptions*

- 17 (2) Subsection (1):
18 (a) is subject to any contrary order of a court; and
19 (b) does not apply if the thing:
20 (i) is forfeited or forfeitable to the Commonwealth; or
21 (ii) is the subject of a dispute as to ownership.
22 (3) The Secretary is not required to take reasonable steps to return a
23 thing because of paragraph (1)(c) if:
24 (a) proceedings in respect of which the thing may afford
25 evidence were instituted before the end of the 60 days and
26 have not been completed (including an appeal to a court in
27 relation to those proceedings); or
28 (b) the thing may continue to be retained because of an order
29 under section 487Z; or
30 (c) the Commonwealth, the Secretary or an authorised officer is
31 otherwise authorised (by a law, or an order of a court, of the
32 Commonwealth or of a State or Territory) to retain, destroy,
33 dispose of or otherwise deal with the thing.

1 *Return of thing*

- 2 (4) A thing that is required to be returned under this section must be
3 returned to the person from whom it was seized (or to the owner if
4 that person is not entitled to possess it).

5 **487Z Issuing officer may permit a seized thing to be retained**

6 *Application to retain seized thing*

- 7 (1) The Secretary may apply to an issuing officer for an order
8 permitting the retention of a thing seized under this Division for a
9 further period if proceedings in respect of which the thing may
10 afford evidence have not commenced before the end of:
11 (a) 60 days after the seizure; or
12 (b) a period previously specified in an order of an issuing officer
13 under this section.
- 14 (2) Before making the application, the Secretary must:
15 (a) take reasonable steps to discover who has an interest in the
16 retention of the thing; and
17 (b) if it is practicable to do so, notify each person whom the
18 Secretary believes to have such an interest of the proposed
19 application.

20 *Order to retain seized thing*

- 21 (3) The issuing officer may order that the thing may continue to be
22 retained for a period specified in the order if the issuing officer is
23 satisfied that it is necessary for the thing to continue to be retained:
24 (a) for the purposes of investigating whether:
25 (i) a work-related offence has been committed; or
26 (ii) a work-related provision has been contravened; or
27 (b) to enable evidence of such an offence or contravention to be
28 secured for the purposes of a prosecution or action.
- 29 (4) The period specified must not exceed 3 years.

30 **487ZA Disposal of seized things**

- 31 (1) The Secretary may dispose of a thing seized under this Division if:

- 1 (a) the Secretary has taken reasonable steps to return the thing to
2 a person; and
3 (b) either:
4 (i) the Secretary has been unable to locate the person; or
5 (ii) the person has refused to take possession of the thing.
6 (2) The Secretary may dispose of the thing in any manner that he or
7 she thinks appropriate.

8 **487ZB Compensation for acquisition of property**

- 9 (1) If the operation of section 487ZA would result in an acquisition of
10 property from a person otherwise than on just terms, the
11 Commonwealth is liable to pay a reasonable amount of
12 compensation to the person.
13 (2) If the Commonwealth and the person do not agree on the amount
14 of the compensation, the person may institute proceedings in a
15 court of competent jurisdiction for the recovery from the
16 Commonwealth of such reasonable amount of compensation as the
17 court determines.
18 (3) In this section:
19 *acquisition of property* has the same meaning as in paragraph
20 51(xxxi) of the Constitution.
21 *just terms* has the same meaning as in paragraph 51(xxxi) of the
22 Constitution.

23 **Subdivision F—Issue of search warrants**

24 **487ZC Issue of search warrants**

25 *Application for search warrant*

- 26 (1) An authorised officer may apply to an issuing officer for a search
27 warrant under this section in relation to premises.

28 *Issue of search warrant*

- 29 (2) The issuing officer may issue the search warrant if the issuing
30 officer is satisfied, by information on oath or affirmation, that there

1 are reasonable grounds for suspecting that there is, or there may be
2 within the next 72 hours, evidential material on the premises.

3 (3) However, the issuing officer must not issue the search warrant
4 unless the authorised officer or some other person has given to the
5 issuing officer, either orally or by affidavit, such further
6 information (if any) as the issuing officer requires concerning the
7 grounds on which the issue of the warrant is being sought.

8 *Content of search warrant*

- 9 (4) The search warrant must:
- 10 (a) state the work-related offence or offences, or work-related
11 provision or provisions, to which the warrant relates; and
 - 12 (b) describe the premises to which the warrant relates; and
 - 13 (c) state that the warrant is issued under this Subdivision; and
 - 14 (d) specify the kind of evidential material that is to be searched
15 for under the warrant; and
 - 16 (e) state that the evidential material specified, and any other
17 evidential material found in the course of executing the
18 warrant, may be seized under the warrant; and
 - 19 (f) name one or more authorised officers; and
 - 20 (g) authorise the authorised officers named in the warrant:
 - 21 (i) to enter the premises; and
 - 22 (ii) to exercise the powers set out in this Division in relation
23 to the premises; and
 - 24 (h) state whether entry is authorised to be made at any time of
25 the day or during specified hours of the day; and
 - 26 (i) specify the day (not more than 1 week after the issue of the
27 warrant) on which the warrant ceases to be in force.

28 **487ZD Search warrants by telephone, fax etc.**

29 *Application for search warrant*

- 30 (1) An authorised officer may apply to an issuing officer by telephone,
31 fax or other electronic means for a search warrant under
32 section 487ZC in relation to premises:
- 33 (a) in an urgent case; or
 - 34 (b) if the delay that would occur if an application were made in
35 person would frustrate the effective execution of the warrant.

- 1 (2) The issuing officer may require communication by voice to the
2 extent that it is practicable in the circumstances.
- 3 (3) Before applying for the search warrant, the authorised officer must
4 prepare an information of the kind mentioned in subsection
5 487ZC(2) in relation to the premises that sets out the grounds on
6 which the warrant is sought. If it is necessary to do so, the
7 authorised officer may apply for the warrant before the information
8 is sworn or affirmed.

9 *Issuing officer may complete and sign search warrant*

- 10 (4) The issuing officer may complete and sign the same search warrant
11 that would have been issued under section 487ZC if the issuing
12 officer is satisfied that there are reasonable grounds for doing so:
13 (a) after considering the terms of the information; and
14 (b) after receiving such further information (if any) as the issuing
15 officer requires concerning the grounds on which the issue of
16 the warrant is being sought.
- 17 (5) After completing and signing the search warrant, the issuing officer
18 must inform the authorised officer, by telephone, fax or other
19 electronic means, of:
20 (a) the terms of the warrant; and
21 (b) the day on which, and the time at which, the warrant was
22 signed.

23 *Obligations on authorised officer*

- 24 (6) The authorised officer must then do the following:
25 (a) complete a form of search warrant in the same terms as the
26 warrant completed and signed by the issuing officer;
27 (b) state on the form the following:
28 (i) the name of the issuing officer;
29 (ii) the day on which, and the time at which, the search
30 warrant was signed;
31 (c) send the following to the issuing officer:
32 (i) the form of search warrant completed by the authorised
33 officer;
34 (ii) the information referred to in subsection (3), which
35 must have been duly sworn or affirmed.

- 1 (7) The authorised officer must comply with paragraph (6)(c) by the
2 end of the day after the earlier of the following:
3 (a) the day on which the search warrant ceases to be in force;
4 (b) the day on which the search warrant is executed.

5 *Issuing officer to attach documents together*

- 6 (8) The issuing officer must attach the documents provided under
7 paragraph (6)(c) to the search warrant signed by the issuing officer.

8 **487ZE Authority of search warrant**

- 9 (1) A form of search warrant duly completed under subsection
10 487ZD(6) is authority for the same powers as are authorised by the
11 search warrant signed by the issuing officer under subsection
12 487ZD(4).
- 13 (2) In any proceedings, a court is to assume (unless the contrary is
14 proved) that an exercise of power was not authorised by a search
15 warrant under section 487ZD if:
16 (a) it is material, in those proceedings, for the court to be
17 satisfied that the exercise of power was authorised by that
18 section; and
19 (b) the warrant signed by the issuing officer authorising the
20 exercise of the power is not produced in evidence.

21 **487ZF Offence relating to search warrants by telephone, fax etc.**

22 An authorised officer must not:

- 23 (a) state in a document that purports to be a form of search
24 warrant under section 487ZD the name of an issuing officer
25 unless that issuing officer signed the warrant; or
26 (b) state on a form of search warrant under that section a matter
27 that, to the authorised officer's knowledge, departs in a
28 material particular from the terms of the warrant signed by
29 the issuing officer under that section; or
30 (c) purport to execute, or present to another person, a document
31 that purports to be a form of search warrant under that section
32 that the authorised officer knows departs in a material
33 particular from the terms of a warrant signed by an issuing
34 officer under that section; or

1 (d) give to an issuing officer a form of search warrant under that
2 section that is not the form of search warrant that the
3 authorised officer purported to execute.

4 Penalty: Imprisonment for 2 years.

5 **Subdivision G—Identity cards**

6 **487ZG Identity cards**

7 (1) The Secretary must issue an identity card to an authorised officer
8 for the purposes of this Division.

9 *Identity card must be carried by authorised officer*

10 (2) An authorised officer must carry his or her identity card at all times
11 when exercising powers as an authorised officer under this
12 Division.

13 *Form of identity card*

14 (3) The identity card must:

- 15 (a) be in the form approved by the Secretary; and
16 (b) contain a recent photograph of the authorised officer.

17 *Offence*

18 (4) A person commits an offence if:

- 19 (a) the person has been issued with an identity card under
20 subsection (1); and
21 (b) the person ceases to be an authorised officer; and
22 (c) the person does not, as soon as practicable after so ceasing,
23 return the identity card to the Secretary.

24 Penalty: 1 penalty unit.

25 (5) An offence against subsection (4) is an offence of strict liability.

26 Note: For strict liability, see section 6.1 of the *Criminal Code*.

27 (6) Subsection (4) does not apply if the identity card was lost or
28 destroyed.

29 Note: A defendant bears an evidential burden in relation to the matter in this
30 subsection, see subsection 13.3(3) of the *Criminal Code*.

1 **Subdivision H—Powers of issuing officers**

2 **487ZH Powers of issuing officers**

3 *Powers conferred personally*

- 4 (1) A power conferred on an issuing officer by this Division is
5 conferred on the issuing officer:
6 (a) in a personal capacity; and
7 (b) not as a court or a member of a court.

8 *Powers need not be accepted*

- 9 (2) The issuing officer need not accept the power conferred.

10 *Protection and immunity*

- 11 (3) An issuing officer exercising a power conferred by this Division
12 has the same protection and immunity as if the issuing officer were
13 exercising the power:
14 (a) as the court of which the issuing officer is a member; or
15 (b) as a member of the court of which the issuing officer is a
16 member.

17 **25 Subsection 493(1)**

18 After “regulations”, insert “or for a civil penalty order”.

19 **26 Subsection 493(2)**

20 After “regulations”, insert “or of proceedings for a civil penalty order”.

21 **27 Subsection 493(3)**

22 After “regulations”, insert “or for a civil penalty order”.

23 **28 Subsection 493(4)**

24 After “regulations”, insert “or of proceedings for a civil penalty order”.

25 **29 After section 506**

26 Insert:

1 **506A Regulations may provide for infringement notices**

- 2 (1) The regulations may provide for a person who is alleged to have
3 contravened a civil penalty provision to pay a penalty to the
4 Commonwealth as an alternative to proceedings for a civil penalty
5 order against the person.
- 6 (2) The penalty must not exceed one-fifth of the maximum penalty that
7 a court could impose on the person for a contravention of the civil
8 penalty provision.
9

1 **Part 2—Application and transitional provisions**

2 **30 Definitions**

3 In this Part:

4 *commencement* means the commencement of this Schedule.

5 *Migration Act* means the *Migration Act 1958*.

6 **31 Transitional—regulations**

7 (1) This item applies to regulations if:

8 (a) the regulations were made for the purposes of section 140R
9 of the Migration Act; and

10 (b) the regulations were in force immediately before
11 commencement.

12 (2) The regulations have effect, after commencement, as if they had been
13 made for the purposes of section 506A of that Act, as inserted by this
14 Schedule.

15 **32 Application—Part 8D of the Migration Act**

16 Despite the repeal of Part 8D of the Migration Act by this Schedule, that
17 Part continues to apply in relation to the following as if that repeal had
18 not happened:

19 (a) an application under subsection 486R(1) or 486U(4) of that
20 Act that was made before commencement if a decision on the
21 application was not made before commencement;

22 (b) a requirement under subsection 486U(2) of that Act that was
23 made before commencement if the requirement was not
24 complied with before commencement.

25 **33 Application—Part 8E of the Migration Act**

26 Part 8E of the Migration Act, as inserted by this Schedule, applies in
27 relation to a work-related offence that is committed, or allegedly
28 committed, before or after commencement.
29

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