

HOW HAS AUSTRALIA RESPONDED TO SEX TRAFFICKING?

In Australia, human trafficking for exploitation in the sex industry is a crime.

Australia has introduced laws that make trafficking, sexual servitude, slavery, deceptive recruiting for sexual services and debt bondage criminal offences.¹ The trafficking in persons offences target trafficking for exploitation in the commercial sex industry and other forms of exploitation.²

The term 'exploitation' is defined by Australian criminal laws. It includes slavery, sexual servitude, and forced labour. There are also separate offences that target debt bondage and deceptive recruiting for sexual services.

It is important to distinguish cases of trafficking for sexual exploitation in the commercial sex industry from migrant sex work. In cases of trafficking to the sex industry, the trafficked person either does not consent to the exploitation or the consent of the trafficked person is treated as legally irrelevant because of the use of coercion, deception or other forms of abuse.

Australian anti-trafficking laws are separate from laws made by the Australian states to regulate sex work. The anti-trafficking laws do not criminalise sex-work.

In Australia sex work is either legal (Australian Capital Territory, Northern Territory, Queensland, Victoria and Western Australia), decriminalised (New South Wales), or criminalised (South Australia), with the exception of Tasmania, where private sex work is legal but brothels are criminalised. Currently the Australian Capital Territory, Queensland, South Australia and Western Australia are reviewing their sex work laws.³

Women who are trafficked to Australia may sometimes find themselves in situations of debt bondage where they are required to continue working in the sex industry to pay off a large debt or they are not free to cease providing sexual services or leave the area where the services are provided. Women who are trafficked to Australia may be exploited in conditions of slavery or sexual servitude.

HOW HAS AUSTRALIA RESPONDED TO SEX TRAFFICKING?

1. WHAT LAWS HAS AUSTRALIA INTRODUCED?

Australian laws criminalising trafficking for sexual exploitation do not use the language of *Trafficking Protocol*. Instead, Australia has introduced the following offences:

- sexual servitude (s 270.6(1) of the *Criminal Code*)
- conducting a business involving sexual servitude (s 270.6(2) of the *Criminal Code*)
- deceptive recruiting for sexual services (s 270.2(1) of the *Criminal Code*)

There are also trafficking offences where a person is trafficked to or from Australia in circumstances where a person is deceived about:

- the fact a person will be required to provide sexual services; or
- the nature of sexual services to provided;
- the extent to which a person is free to cease providing sexual services or leave the area where the services are provided; or the fact the person will be required to provide sexual services until the person has paid off a debt
- the confiscation of travel or identity documents (see s 271.2 of the *Criminal Code*)

The *Criminal Code* defines sexual services as the commercial use or display of the body of the person providing the service for the sexual gratification of others.

Australia has also introduced offences of slavery and debt bondage. Debt bondage offences make it an offence to require a person to provide sexual services to pay off large debts.

The slavery offences prohibit using or possessing a slave. Slavery is defined as the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

Australian law also prohibits trafficking for the purpose of exploitation through forced labour. Although sex work is legal in Australia, the definition of forced labor in the Australian *Criminal Code* does not cover the provision of sexual services.

There are dedicated teams of federal police to combat trafficking in persons and a National Policing Strategy to Combat Trafficking in Women for Sexual Servitude.

HOW HAS AUSTRALIA RESPONDED TO SEX TRAFFICKING?

2. WHAT IS SEXUAL SERVITUDE?

The [Criminal Code Act 1995 \(Cth\)](#) makes it an offence to intentionally or recklessly cause a person to enter into or remain in sexual servitude or conduct any business that involves sexual servitude and know about or be reckless to the fact that sexual servitude is occurring.

Sexual servitude is defined by the [Criminal Code Act 1995 \(Cth\)](#) as the condition of a person who provides sexual services and who, because of the use of force or threats, is not free to cease providing sexual services or is not free to leave the place or area where the person provides sexual services (s 270.4). 'Threat' means:

- a threat of force; or
- a threat to cause a person's deportation; or
- a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

The meaning of sexual servitude was discussed in the case of *Johan Sieders and Somsri Yotchomchin*, where the Court concluded:

the definition of sexual servitude [in the Commonwealth Criminal Code] ... is concerned only with a very specific respect in which there is a limitation on the freedom of action of the person in question. A person can be free to do a multitude of different things, but if she is not free to cease providing sexual services, or not free to leave the place or area where she provides sexual services, she will, if the other condition of the section is met, be in sexual servitude.⁴

3. WHAT IS DECEPTIVE RECRUITING FOR SEXUAL SERVICES?

Under the [Criminal Code Act 1995 \(Cth\)](#) deceptive recruiting for sexual services is an offence (s 270.6).

Deceptive recruiting occurs where a person, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about any of the following matters:

- the fact that the engagement will involve the provision of sexual services;

HOW HAS AUSTRALIA RESPONDED TO SEX TRAFFICKING?

- the nature of sexual services to be provided (for example, whether those services will require the person to have unprotected sex);
- the extent to which the person will be free to leave the place or area where the person provides sexual services;
- the extent to which the person will be free to cease providing sexual services;
- the extent to which the person will be free to leave his or her place of residence;
- 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;
- the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person's travel or identity documents.

1. The slavery, sexual servitude and debt bondage offences were introduced by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* and the trafficking offences and debt bondage offences were introduced by the *Criminal Code Amendment (Trafficking in Persons) Act 2005*.

2. There is no specific offence of trafficking for forced marriage.

3. Scarlet Alliance, *State by State Laws in Australia*, 26 September 2011, Scarlet Alliance, <http://www.scarletalliance.org.au/laws/>.

4. *Sieders v R; Somsri v R* [2008] NSWCCA 187, 95.