

2000

**THE LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL
TERRITORY**

CRIMES AMENDMENT BILL 2000 (No 3)

EXPLANATORY MEMORANDUM

Circulated by authority of the
Attorney-General
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Outline

The purpose of this Bill is to insert a new Part 3C in the *Crimes Act 1900* to create offences relating to sexual servitude and deceptive recruiting for sexual services.

The Bill is based on the Model Bill relating to slavery, sexual servitude and deceptive recruiting for sexual services developed by the Model Criminal Code Officers' Committee for the Standing Committee of Attorneys-General. However, it does not include the slavery provisions of the Model Bill, as these are more appropriately dealt with by the Commonwealth (and have already been enacted under the Commonwealth *Criminal Code Act*).

The Bill is intended to form part of a package of Commonwealth, State and Territory offences relating to sexual servitude and deceptive recruiting for sexual services. The Commonwealth and South Australia have already passed legislation based on the model provisions, and it is understood that the other States and the Northern Territory will follow suit in due course.

The Bill also makes a number of minor, unrelated amendments to the *Crimes Act 1900*, such as removal of unnecessary definitions and provisions, and amends the definition of "offensive weapon" in three sections of the Act.

Financial Impact

It is not anticipated that the Bill will have a financial impact on Government expenditure. The costs of any investigations and prosecutions will come from existing budgetary allocations for the Australian Federal Police (ACT Policing) and the Office of the Director of Public Prosecutions.

NOTES ON CLAUSES

Clause 1 Name of Act

The Bill, once enacted, will be known as the *Crimes Amendment Act 2000 (No 3)*.

Clause 2 Commencement

The proposed Act will commence on the day it is notified in the Gazette.

Clause 3 Act amended

The proposed Act amends the *Crimes Act 1900*.

Clause 4 Insertion

Inserts a new Part following Part 3B of the *Crimes Act 1900*, entitled "Part 3C – Sexual Servitude".

Section 92ZA Definition of sexual servitude

This section explains words and phrases used in the proposed Act. The defined terms are: sexual servitude, sexual services and threat.

The concept of "sexual servitude" involves domination over a sex worker to an extent that denies the worker his or her freedom in either of two fundamental respects; namely the freedom to stop providing the services or to leave the place where the services are being provided.

Whether a worker's freedom has been denied to the extent required by the section will be determined according to the 'reasonable adult person' test. This is the same test that applies in relation to certain pornography offences under the *Crimes Act 1900*. Clearly, however, the concept is intended to apply only to situations where the element of servitude is present. The fact that a person may suffer a penalty under the terms of a typical employment contract would not of itself amount to sexual servitude.

The domination over the worker may be brought about by way of threats or force. A single threat is sufficient to make out the offence of sexual servitude. The threat or force need not be against the sex worker, but may be against another person, such as the worker's child.

An example of a threat may be a threat to withhold money owed to the worker unless he or she continues to provide the sexual services.

However, the Bill recognises that there may be occasions where there are reasonable grounds for making a threat. The Model Criminal Code Officers' Committee gives the example of a worker who is happy to provide sexual services, is free to leave, is not mistreated or subject to other force, but who simply refuses to kiss any clients. The employer in this situation may be justified in threatening to dismiss the worker on that basis. This provision reflects that the purpose of the Bill is to regulate sexual servitude, not to regulate prostitution or other sex work.

The broad definition of "sexual services" ensures that the new Part applies to commercial sexual services including prostitution and other sex work such as erotic dancing and pornography.

Section 92ZB Sexual servitude offences

This section creates two sexual servitude offences.

Section 92ZB (1) is designed to catch those directly involved in causing a person's sexual servitude, or the continuation of it, such as brothel operators, as well as those that are indirectly involved (provided that the required causation and intent requirements are satisfied).

Section 92ZB (2) makes it clear that persons who conduct a business that involves the sexual servitude of others can also be found guilty of sexual servitude. Conducting a business includes managing, or providing finance for, a business. The definition is inclusive so that other conduct that amounts to conducting a business would also be caught by the provision.

The maximum penalty for either sexual servitude offence is 19 years imprisonment for an aggravated offence and 15 years imprisonment in any other case. "Aggravated offence" is defined in section 92ZD, and essentially means an offence that is committed against a person under 18 years of age.

Section 92ZC Deceptive recruiting for sexual services

This offence is aimed at a limited class of deceptions designed to recruit sex workers by concealing the fact that the engagement will involve the provision of sexual services. For example, it will be an offence to tell a potential recruit that she will be employed as a waitress when she is in fact being recruited to work as a prostitute. This type of behaviour does not fall easily within existing fraud offences, hence the need for a specific offence.

The element of sexual servitude is not required for this provision to apply. Recruiting someone into sexual servitude would be covered by section 92ZB(1), and would attract the higher penalties provided for in that section.

The maximum penalty for this offence is 9 years imprisonment for an aggravated offence and 7 years imprisonment in any other case. Again, an aggravated offence is when a victim is under the age of 18 years.

Section 92ZD Increased penalty for aggravating offences

This section provides that sexual servitude or deceptive recruiting offences committed against someone under the age of 18 years are subject to higher maximum penalties than offences committed against adults.

Increased maximum penalties for offences against children and young people are consistent with a number of other sexual offence provisions in the *Crimes Act 1900*. The age of 18 has been chosen in line with the model provisions and the Model Criminal Code.

Section 92ZE Alternative verdict if aggravated offence not proven

This type of provision appears elsewhere in the *Crimes Act 1900* and ensures that there is an appropriate level of flexibility in the sentencing process.

Clause 5 Repeal of Acts

Repeals four pieces of defunct slavery legislation dating from the 1800s. The Commonwealth *Criminal Code Act 1995* makes it clear that slavery will continue to be unlawful and its abolition maintained despite the repeal of these Acts.

Clause 6 Consequential amendments of *Interpretation Act 1967*

Provides that the four Acts relating to slavery repealed by Clause 5 are no longer sources of law of the Territory.

Schedule 1 Minor amendments

The Schedule makes a number of minor amendments to the *Crimes Act 1900*. These include removal of unnecessary definitions, alterations to section headings, relocation of definitions to a dictionary and the addition of new definitions as a consequence of the new Part 3C. It also amends three sections of the Act so that a single definition of "offensive weapon" is used throughout the Act.