Question 1

Has your country signed and ratified the Palermo Protocol? If yes, on what date?

Answer 1

Yes - Australia signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children on 11 December 2002, and it was subsequently ratified on 14 September 2005.1

Question 2

Does your country have special legislation for the criminal prosecution of human trafficking? If yes, please answer Questions 3 to 10. If no, is there any such legislation presently under consideration?

Answer 2

Yes – it is contained in the national Criminal Code, Chapter 8 Division 271— “Trafficking in persons and debt bondage”

Question 3

How is human trafficking defined in your country’s legislation?

Answer 3

Inbound, outbound and domestic trafficking of persons are dealt with separately. Copies of the relevant provisions are attached. The definitions for the first two categories are designed to reflect art 3(a) of the Protocol.

Question 4

Does the legislation criminalize:

a) Attempts to commit a trafficking offence?
b) Participation as an accomplice or party in a trafficking offence?
c) Organizing or directing others to commit a trafficking offence?

Answer 4

(a) Yes – see Part 2.4 Division 11 of the Code
(b) Yes – see Part 2.4 Division 11 of the Code
(c) Yes – see Part 2.4 Division 11 of the Code

Question 5

Can corporations be charged with human trafficking along with natural persons (ie. employment agencies, travel agencies, escort services)?

Answer 5

Yes - see Part 2.5 Division 12 of the Code.

Question 6

Does the legislation contain special provisions regarding the trafficking in children? If yes, please describe.

Answer 6

Yes - the special provisions for trafficking of children are s 271.4 – Inbound and outbound trafficking of children and s 271.7 – Domestic trafficking of children. See attached.

Question 7

What are the penalties for human trafficking offences? Do they include deportation/extradition? Do they include confiscation of instruments of trafficking and proceeds of trafficking?

Answer 7

Different terms of imprisonment apply to different trafficking offences:
• ss 271.2 and 271.5 – trafficking in persons – maximum 12 years
• ss 271.3 and 271.6 – aggravated offence of trafficking – maximum 20 years
• ss 271.4 and 271.7 – trafficking in children – maximum 25 years

Aggravated trafficking is trafficking where the offender
• intends that the victim will be exploited
• subjects the victim to cruel, inhuman or degrading treatment or
• in committing the offence, engages in conduct that gives rise to a danger of death or serious harm to the victim; and is reckless as to that danger.
Following a conviction for trafficking, a non-citizen may be deported under the \textit{Migration Act 1958}. This is regarded not as part of the punishment for the offence, but as the exercise of a discretionary power by the government to safeguard the nation.

Instruments and proceeds of trafficking may be confiscated under the \textit{Proceeds of Crime Act 2002}.

\textbf{Question 8}

Are there statistics available on the number of prosecutions and rates of conviction in your country for human trafficking offences since its anti-trafficking legislation was adopted? If yes, please provide.

\textbf{Answer 8}

Only a small number of prosecutions have been completed under provisions prohibiting human trafficking since their enactment. In New South Wales a Mr Rasalingam was acquitted\(^2\) and more recently in Queensland the conviction of a Mr Dobie on two charges under s 271.2 was upheld.\(^3\) A number of cases are pending.

A summary of prosecutions brought under s 270 (slavery – not the subject of the Palermo Protocol) and s 271 of the Act can be found at \url{http://www.fahcsia.gov.au/sa/women/pubs/violence/traffic_women/Pages/experience_prosecution.aspx} (copy attached)

\textbf{Question 9}

To what extent does your country permit (through legislation or protocols) the pursuit of anti-trafficking investigations in cooperation with foreign intelligence or police services?

\textbf{Answer 9}

Police-to-police cooperation between the Australian Federal Police and their counterparts in other countries is made possible through memoranda of understanding between the agencies.\(^4\)

Australia may request assistance from foreign governments regarding with investigations of criminal matters pursuant to \textit{Mutual Assistance in Criminal Matters Act 1987} (Cth).

\(^2\) \textit{R v Rasalingam}, unreported, District Court, NSW, 2 November 2007.

\(^3\) \textit{R v Dobie [2009] QCA 394}.

Question 10

Are there provisions protecting trafficked persons from being prosecuted or punished for their illegal entry or residence in your country as a result of having been the victims of human trafficking? Are there provisions preventing their deportation where there are grounds to believe that their return to their country of origin presents a significant security risk to them or their family members?

Answer 10

Prosecution

No Australian provisions protecting trafficked persons from being prosecuted or punished for their illegal entry into or residence in Australia as a result of having been the victims of human trafficking have been identified.

Deportation

Trafficked persons (and any other non-citizens) who believe that their return to their country of origin presents a significant security risk to them or their family members may apply for a protection visa if they can demonstrate that they are “a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol.”

Trafficked persons who do not qualify for a protection visa (eg because they are not refugees) may apply for a criminal justice visa whether or not there are grounds to believe that their return to their country of origin presents a significant security risk to them or their family members. Below is a summary of the types of visas available:

- Bridging Visa F (Class WF)

  This is a temporary visa that can be granted to a person who has been identified as a suspected victim of human trafficking. The State or Commonwealth will issue a Criminal Justice Stay Certificate if it is determined during the time of the visa that the suspected victim is of assistance to investigations or prosecutions. Such certificate is a prerequisite for a Criminal Justice Stay Visa.

- Criminal Justice Stay Visa

  This is also a temporary visa that is part of the category of criminal justice visas. The Commonwealth or State that issued the certificate is required under s 162 of the Migration Act to cancel the certificate at the conclusion of the investigation or prosecution, thereby cancelling the visa. The holder of a CJSV cannot apply for any other visa apart from a protection visa (which includes a permanent witness protection (trafficking) visa).

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5 Migration Act 1958 (Cth), s 36(2)(a). See also Part 2 Division 3 Subdivision AL of the Act.
6 Migration Act 1958 (Cth), ss 37, 72 – 73; see also Migration Regulations 1994 (Cth), reg 2.20 and reg 2.20B.
7 Migration Regulations 1994 (Cth), Schedule 1, 1306(3)(d).
8 Migration Act 1958 (Cth), ss 147 – 8.
9 Migration Act 1958 (Cth), s 157.
10 Migration Act 1958 (Cth), s 38.
11 Migration Act 1958 (Cth), Part 2 Division 4.
12 Migration Act 1958 (Cth), s 161(5).
• Permanent Witness Protection (Trafficking) Visa (Class DH)

This is part of the category of protection visas created under s 36 of the *Migration Act*. Regulation 2.07AK(3) of the *Regulations* requires a certificate from the federal Attorney-General certifying that the applicant cooperated and contributed significantly to investigations or prosecutions and that the Attorney believes that the person is at risk if returned home.

All visas will prevent their deportation.
AUSTRALIAN PROVISIONS RELATING TO INBOUND HUMAN TRAFFICKING: CRIMINAL CODE s 271.2

(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.

(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.

(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.

(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.
AUSTRALIAN PROVISIONS RELATING TO OUTBOUND HUMAN TRAFFICKING: **CRIMINAL CODE** s 271.2

(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.

(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.

(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.

(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.
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.
AUSTRALIAN PROVISIONS RELATING TO TRAFFICKING OF CHILDREN: CRIMINAL CODE

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.

271.7 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.