

CRIMINAL CODE (IDENTITY THEFT) AMENDMENT BILL (NO. 2) 2009

Second Reading

MR J.R. QUIGLEY (Mindarie) [4.08 pm]: I move —

That the bill be now read a second time.

The Criminal Code (Identity Theft) Amendment Bill (No. 2) 2009 is significantly different from the Criminal Code (Identity Theft) Amendment Bill which I introduced to this Parliament earlier in the year and which was defeated on the floor of this chamber. There is a gaping hole in the law in Western Australia, which does not currently prescribe an offence for the possession of skimming devices or the materials obtained from skimming devices or for trading in false identities. I note that Western Australia Police has released a report that a scam currently running principally through McDonald's stores has swelled from \$450 000 early this week to \$1 million today—14 October 2009.

The bill for which I am introducing a second reading to the chamber today is a replication of the South Australian legislation, which has not been the subject of any judicial criticism in that state. I refer to the Criminal Law Consolidation Identity Theft Amendment Act 2003 of South Australia. That legislation was considered by a state and commonwealth Attorneys General conference in a report of March 2008. The South Australian legislation was recommended as the model legislation for Australia.

The Criminal Code (Identity Theft) Amendment Bill 2009 was an attempt by me to introduce the Queensland model, also incorporating some features of the Victorian legislation. It is clear that other states have effective laws, and it may be that because of those effective laws, people running scams are attracted to Western Australia, which does not have them. Accordingly, I have drafted the bill almost word for word from the South Australian legislation, which was approved by the state and commonwealth Attorneys General. The main features of this legislation are that clause 4 is a definition clause that defines a digital signature, an electronic communication and a false identity. For the purposes of clause 4, personal identification information is also defined.

The proposed amendments state —

- (1) A person who —
 - (a) assumes a false identity; or
 - (b) falsely pretends —
 - (i) to have particular qualifications; or
 - (ii) to, or to be entitled to act in, a particular capacity,
makes a false pretence to which this section applies.
- (2) A person who assumes a false identity makes a false pretence to which this section applies even though the person acts with the consent of the person whose identity is falsely assumed.
- (3) A person who makes a false pretence to which this section applies intending, by doing so, to commit, or facilitate the commission of, a serious criminal offence is guilty of an offence and liable to the penalty appropriate to an attempt to commit the serious offence.

Therefore, a person using a false identity will be liable to the same penalty as a person who has attempted to commit the serious offence. Proposed section 440D(2) states that it is irrelevant whether the person whose identity is being assumed is living or dead, or whether he consents to the use of the false identification.

Under proposed section 440E the bill also provides that —

- (1) A person who —
 - (a) produces prohibited material ...

which is defined in the definitions section as —

... anything (including personal identification information) that enables a person to assume a false identity or to exercise a right of ownership that belongs to someone else to funds, credit, information or any other financial or non-financial benefit;

Meaning that anyone who produces prohibited material and is in possession of that prohibited material and is —

... intending to use the material, or to enable another person to use the material, for a criminal purpose is guilty of an offence.

That person would be liable to a maximum of three years' imprisonment. Similarly, a person who sells or seeks to trade in prohibited material is guilty of an offence and would be subject to a maximum term of imprisonment of three years.

Proposed section 440E(3) is significant because it covers a further hole in Western Australian law. It states —

A person who is in possession of equipment for making prohibited material intending to use it to commit an offence against this section is guilty of an offence.

Maximum penalty: Imprisonment of 3 years.

As with the earlier bill I introduced into this chamber, the South Australian version of which was approved by the state and commonwealth Attorneys General, this bill provides exemptions in proposed section 440G, in that it does not apply —

- (a) to misrepresentation by a person under the age of 18 years for the purpose of —
 - (i) obtaining alcohol, tobacco or any other product not lawfully available to persons under the age of 18; or
 - (ii) gaining of entry to premises to which access is not ordinarily allowed to persons under the age of 18 ...

The bill intends to strike at the more serious conduct of using false misrepresentations to steal our money from us or to illegally obtain credit debited to us.

Finally, the bill provides that upon the conviction of an offender, the victim, defined in the definition clause as “a person whose identity has been assumed, or personal identification information has been used, without the person's consent”, can apply to the court to have a certificate issued. The certificate will detail the offence, the name of the victim, and any other matters considered relevant by the court. Those matters would include, of course, the period of time during which the false identity was being used by the offender. The certificate will enable victims to approach credit providers and banks and suchlike with ease and produce the judge's certificate to evidence that those funds that were debited from their account and the credit run up was not as a result of a valid contract, so that the funds can be repatriated. At the moment, banks do return the money, but sometimes the process involved and the heartache involved to the victims is significant and it takes, in some cases, two or three months to redeem the money.

The bill itself, being a direct replication of the South Australian legislation, which I stress has been unanimously approved by state and commonwealth Attorneys General as model legislation and has not been the subject of judicial criticism in its home state, South Australia, is worthy of the consideration of this house. I commend the bill to the chamber.

Debate adjourned, on motion by **Mr J.E. McGrath**.