

CRIMINAL CODE (IDENTITY THEFT) AMENDMENT BILL 2009

Second Reading

Resumed from 10 June.

MR R.F. JOHNSON (Hillarys — Leader of the House) [6.04 pm]: I rise to make a very tiny contribution, because I was just told that the opposition had three speakers on this bill. Mindful of the time and the amount of private members' time that we have left, if the opposition has not got any speakers perhaps it would let us know and we might be able to assist in some way. That was a very small contribution.

Mr E.S. Ripper: It is usual when the government presents a bill that, on the resumption of a second reading debate, the opposition speaks. When the opposition presents a bill it is usual for the government to lead off and to say whether it will support the bill or not.

Mr R.F. JOHNSON: We have done that and it has happened. In my contribution to this bill, which the member for Mindarie has brought in, I just wanted to make it quite clear that if members want to go home early, that is fine by me, but I was told by the opposition Whip that the opposition had three speakers on this bill. It is not up to us to keep the opposition's bill alive. Obviously, we in government are trying to help. The member for Girrawheen has something to say.

MS M.M. QUIRK (Girrawheen) [6.05 pm]: I apologise to the Leader of the House. I was engrossed in the Bush Fires Amendment Bill and I missed my call.

Mr R.F. Johnson: It is a very important bill, too.

Ms M.M. QUIRK: Exactly.

I consider this bill, which was introduced by the member for Mindarie, to be an important one. The reason I think it is important is that the law—the Attorney General will certainly not disagree with this—always tends to play catch-up with technology. Criminals are now using a range of technology, which has significant implications for law abiding members of the community. I think the stories that we hear on countless occasions about identity theft mean that a serious, comprehensive and timely response is needed.

In my previous occupation I was fairly involved in the investigation of the very matter that we are looking at today. There is an argument that such offences as credit card skimming can already be prosecuted under the existing provisions of the Criminal Code. It was prevalent 10 years ago and is becoming more prevalent. There are variations on the theme and other ways of committing identity theft through the use of computers and other tools, and they also need to be addressed by the criminal law in a more comprehensive manner. For that reason I support this legislation.

It is a matter of concern to me that we are not fully aware of the extent of the problem. The police provide statistics on a weekly, monthly, quarterly and annual basis that are not sufficiently comprehensive. They do not present all the figures for identity theft. I believe that it is much more prevalent than would first appear. It is a problem that affects many Western Australians, yet it is not reported as a statistic and not possible for the public to know the extent of the problem.

Another interesting aspect of this area of crime, which means that we need to take a very hard line on it, is that it is often multi-jurisdictional. For example, someone from Australia may be holidaying in Bali when his card is skimmed and that card is then used in a third jurisdiction. That of course creates an enormous amount of complexity with unravelling where the offence occurred. The reason criminals do this is that it makes it more difficult for investigations to take place and for them to be apprehended. Similarly, skimming can occur in Western Australia and the card be used somewhere else. My view is that we should take more notice and record better details of identity in e-crime than we are currently doing. We need to give the message to the police that it is on the agenda and something that impacts on ordinary Western Australians going about their daily business. We need to have rules that are more targeted and that better respond to the kinds of criminal activities that need to be controlled. We also need to give the police the tools to investigate these matters in a timely fashion.

To sum up we need, first, more targeted laws; secondly, the recording of those offences; and thirdly, good community education for prevention, so that people do not, for instance, give their credit card to someone who then takes it away and uses it out of sight. Several years ago I went to a large seminar run by MasterCard for investigators of credit card skimming. It must have been 12 years ago. It scared me so much that I made a policy for about a year after that not to use my credit card at all. It is very difficult to book a hotel room, hire a car or do almost anything without a credit card; it is simply not possible in this day and age to go about one's daily business and not use a credit card. Everyone is a potential victim in this area, so everyone needs to have some level of protection before the law.

In my view the current legislation may well be deficient. If this legislation adds to the enforcement powers of police and allows a more targeted approach to the offence and more properly reflects the criminal conduct that we are trying to control, eradicate and prevent, then this is a worthwhile piece of legislation.

MR D.A. TEMPLEMAN (Mandurah) [6.10 pm]: I am very pleased to make a contribution to the Criminal Code (Identity Theft) Amendment Bill that was introduced by the shadow Attorney General, the member for Mindarie. I note the intention of the bill as outlined by the shadow Attorney General in his second reading speech. I was interested to read not only the second reading speech but also the explanatory memorandum that was provided by the shadow Attorney General, which highlights what this bill seeks to do. The bill essentially, from my understanding of it, seeks to do three key things in amending Western Australia's Criminal Code. Firstly, it seeks to make it an offence to obtain or deal with another entity's identification information for the purpose of committing an indictable offence; secondly, it makes it an offence to possess equipment capable of being able to make identification material; and, thirdly, it enables a judge, after recording a conviction against an offender, to issue a certificate to the victim whose identity has been obtained confirming that the person's identity was stolen by the offender, and containing other information that would help the victim explain the circumstances to financial institutions, credit providers, service providers et cetera.

I note the comments made by the member for Girrawheen, particularly one of the last points that she made; that is, we live in a world where, more and more, we rely on credit cards and debit cards et cetera to carry out our day-to-day transactions and to go about our daily lives. We have almost been forced to do that. We are increasingly becoming a cashless society. As the member for Girrawheen said, whether we travel interstate, intrastate or internationally, the old days of using travellers cheques have gone. We used to buy a bundle of travellers cheques worth a few hundred dollars. Then, when we got to our international destination, we would actually go to one of those bureaux de change.

Mr J.E. McGrath: If they were not stolen in the meantime!

Mr D.A. TEMPLEMAN: That is right. I used to wear that little pouch! I always remember the first time I went travelling. I went on a Contiki tour a few years ago. I will not tell members what I got up to! I can always remember the first time I travelled internationally. As I say, it was only a few years back. I asked people who had been overseas what I should take, as I prepared for my international travel. Here I was, this little boy from Northam—country boy as I am—who had decided to go overseas. I remember one of the first things I bought was one of those wonderful little pouch things that are tied to the body. People said, "They're a pack of thieves when you go to international places!"

Mr F.M. Logan: Apparently the member for Geraldton still wears one when he comes to Perth!

Mr D.A. TEMPLEMAN: I do not know about that. The member might say that but I could not possibly say that, not knowing the needs or otherwise of the member for Geraldton.

Into the little pouch would go the passport and other important documents that required protection. In there also would of course go wads of travellers cheques that, at some stage during one's travels, would be cashed in. All of that has changed. Now, if a person rings up to book accommodation, credit card details are given out to pay for that accommodation. I am sure that, in booking the regional sitting in Bunbury, that important event in the Parliament's history, Mr Speaker has booked out the most lavish accommodation suite. To book accommodation, as our more lowly members of this place have to do, one needs to give credit card details. We live in a society that requires us to use more and more electronic transactions; transactions by debit card, credit card et cetera. It is timely that we have in place appropriate amended legislation to ensure that we are keeping up with modern times and that we are keeping as best as possible abreast of the changing nature of identity fraud. It is important that we have in place the best possible amended legislation, as this bill seeks to do, that addresses the modern way that we do things.

We know that the criminal element in any community is always seeking new, effective ways of lining their pockets. The criminal aspect in the community is becoming increasingly clever at attempting to steal the identity of citizens of Western Australia. One of the ways that people do this is by the scamming, or scanning, processes that are used on automatic teller machines. I noted in the shadow Attorney General's speech that the issue of ATMs and the impact on that industry is mentioned. It is mentioned on the first page of the shadow Attorney General's comments. Automatic teller machines are prevalent more than ever in communities throughout our nation. I blame the banks of course. The banks have been very keen to push the customer either out the door or not even introduce them to the door before they get to the bank. Banks now have the tendency to discourage personal contact with staff and discourage people who seek to have a human face to talk to.

My very good friend Geri Jones used to be a bank teller in Mandurah. He was very popular. He worked at the former R&I Bank. He was very popular with the older ladies in particular, in Mandurah. The older ladies used to go to the bank and ask for Geri. Ladies would say, "Where is Geri? I want that nice man Geri Jones. He is very nice to us." I can remember him telling me—I am sure he will not mind me telling the story to Mr Speaker, as I

know he is interested—that the bank had brought in a regime where it had to keep time of how long its staff were speaking to people. If staff were starting to speak to people for too long, it was frowned upon. One can imagine these wonderful older citizens of Mandurah, particularly the ladies, who would come in and seek out my mate Geri Jones. They would say, “We want to talk to Geri.” Geri would be very entertaining in his communication with the ladies. The ladies left very happy customers. But eventually he left the bank, or he was forced out of the bank at the end, because he was, according to the bank, unproductive! I was outraged by that. I was going to help him stage a major demonstration in the streets of Mandurah, but, due to lack of support, it did not occur! However, my sympathies were with him in spirit if not in action.

I understand from the Leader of the House that I do not need to talk for as long as I was going to. I will be very short, then. I will finish with this very important theme.

Several members interjected.

Mr D.A. TEMPLEMAN: My good mate Geri is actually an entertainer. He also works at CSBP on the strip, and he is very popular there, too. He is a very amiable and affable gentleman.

Apart from that, the point I was attempting to get to, before I was distracted by other members of this place, is that there is now a much bigger prevalence of ATMs throughout the state. They are being located in a lot of places that I do not approve of, to be frank. I have always had a problem with ATMs being located in casinos or in places where people need to feed a particular problem that they have—a gambling habit in particular. I have a problem with that. I think there is a real issue there. ATMs are appearing everywhere. How does this relate to this bill? I can see the Leader of the House and the wonderful communication that we have!

The SPEAKER: Order! Member, if you would sit down, I will explain to you that if you are going to ask for an extension, I will grant it to you, because I think it is quite marvellous the explanation that you are giving, so please continue!

Mr D.A. TEMPLEMAN: Thank you, Mr Speaker! How does this relate to the bill? It relates to the bill because it focuses on the need to keep the Criminal Code and the laws of this state up to date and relevant. In the interests of relevance, I will sit down, Mr Speaker.

MR J.R. QUIGLEY (Mindarie) [6.21 pm] — in reply: I rise to make my closing remarks on the Criminal Code (Identity Theft) Amendment Bill 2009. Although my allotted time is 45 minutes, I will be brief, because there are only a couple of clauses in this bill, and it has been reasonably well debated, I think, at the second reading stage between the Attorney General and myself. The Attorney General has already announced or made it clear to the chamber that the government will, sadly, be voting this bill down, because this is not the government’s own legislation, and he feels that if the government does introduce this type of legislation, it will not be in this form. So I know that I am batting on a losing team, as it were, because unless some of the government members are waylaid in the dining room—which is highly unlikely due to the vigilance of the member for South Perth—this bill will be defeated something like 29 to 25 along party lines. That is sad, because when we look at why this bill is going down, it is going down because of vanity. The people of Western Australia are being denied a protection to which they are entitled.

In the twenty-first century, in 2009, all the citizens of Western Australia are required to have some form of proof of identity. People cannot open a bank account unless they get a number of identity points. People cannot obtain a passport unless they get a couple of identity points. People cannot obtain a driver’s licence unless they get a couple of identity points. We are all required to have documents of identification. Those documents of identification may also include, as we know, the password or PIN to our bank accounts and to other financial information. We are required to have that information. However, that identity documentation that we are required to have is ultimately the key to our financial holdings. If that identity documentation is misappropriated by another person, it can be used not only to take our funds, but also to run up large debts against us individually.

This bill that is before the house is not some bright idea of John Quigley, the member for Mindarie. I cannot claim credit for thinking of it. No, it came from a meeting of state and commonwealth Attorneys General in Canberra, who recognised that identity theft and skimming devices are a problem for the community and resolved that legislation should be brought in, in each of the states, to deal with this problem. As I pointed out in my second reading speech, South Australia and Queensland have enacted this legislation. I have sought to mirror that legislation. That legislation has been the subject of some minor criticism from our Attorney General. For example, in mirroring that legislation so closely, I used the word “misdemeanour”. That word is now not generally used in the Criminal Code but still appears in the Interpretation Act. An amendment was not moved by the government to delete the word “misdemeanour”. The government would rather kill the bill. Kill the bill is the government’s alternative!

The Attorney also made some criticism of that part of the bill that prescribes that it is an offence to be in possession of a skimming device. We know all about skimming devices because of the Romanian gangs that were operating in Western Australia. They would attach skimming devices to an ATM by means of velcro or

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glue and they would glean from that machine whatever information the cardholders used to access their accounts. I spoke to the major fraud squad investigators back in April and May, and I attended upon their offices to discuss this matter at the time that those Romanian gangs were operating, and they said, “Boy oh boy, do we need this legislation urgently! We know who is sending these skimming devices into the state, but the problem is that when the skimming devices arrive here, they are not a prohibited import, and nor is it illegal to possess them, so what can we do? We have to wait until a substantive offence occurs.” During the debate in this chamber on 10 June 2009, the Attorney General sought to address this point by saying —

However, if that were the case, there are a range of other types of criminality that involve the assumption of a false identity—an impersonation—which might have nothing to do with credit cards or indeed data of the type I have mentioned; nevertheless, we might wish to criminalise it as an offence. Someone might impersonate someone else for any number of reasons attached to criminality. When we consider all those difficulties collectively and the way in which the legislation moves backwards and forwards from the Queensland bill to the Victorian bill and does not consistently apply or define the terms that appear in those two bills, I perceive that we would have some difficulties if this were the way in which our jurisdiction went about trying to criminalise the types of behaviour that it appears we are trying to criminalise.

So the Attorney General is saying that it is too difficult in Western Australia to criminalise this behaviour, and I am to be criticised for following the model of the states that did take up the suggestion of the state and commonwealth Attorneys General and did criminalise this behaviour. We are being told by the Attorney General that it appears too difficult to do that, even though other states have done it. The Attorney went on to say —

Presumably if a person were found in a situation in which that person had the type of equipment we are talking about, it is conceivable that the person could be charged with an attempt to steal if it were able to be proved that the person had the requisite intention to steal and that the person’s actions were more than merely preparatory to the commission of that offence.

This is the difficulty the major fraud squad is faced with on a daily basis when looking at such offences. If someone had a video camera of the type referred to in my second reading speech, mounted in a shoebox and placed in a vehicle some several hundred yards away from an ATM, the argument would distil down to the proposition of whether it was mere preparation or something more than mere preparation—for example, an attempt. This artificial argument would become redundant were it not for the fact that this bill is to be killed. However, it will suffer a quick death by vote in about five minutes. Were it not for the fact that this bill is to be killed off in this chamber, it would be an offence to set up a video camera inside a shoebox with a pinhole viewing aperture and place it in a vehicle parked opposite an ATM, with the lens set to zoom so that the camera can read the PIN numbers. That could have been made an offence this week, but the government says no. Actually, I should not say “the government”, because that is not quite right; the member for Hillarys—Polly the Parrot—keeps on saying, “You don’t support the police! You don’t support the police!”

Withdrawal of Remark

Mr R.F. JOHNSON: The member for Mindarie can say what he likes about me; I do not mind, but his comments are unparliamentary, and I ask that he withdraw them.

Mr J.R. QUIGLEY: I withdraw. I did not call the member Polly the Parrot; I meant that his chanting sounds like Polly the Parrot. His chant is, “You don’t support the police! You don’t support the police!”

Debate Resumed

Mr J.R. QUIGLEY: I point out to Liberal Party backbenchers, who claim to support the police, that the police have been calling out for this legislation. I do not refer to the police union’s puppet over there—the member for Hillarys—but the people who support working investigators —

Point of Order

Mr R.F. JOHNSON: Mr Speaker, I do not care what the member for Mindarie says about me. The point of order is that his speech should be relevant to the bill before the house. It is his bill and he is using this time to level personal insults at other members, and I ask you to bring him back to the bill that he is supposed to be speaking to.

Debate Resumed

Mr J.R. QUIGLEY: If the government had one scrap of credibility, was not driven by vanity and arrogance and had the humility to say that on this occasion the collective wisdom of state and commonwealth Attorneys General was right, and that this kind of behaviour could be criminalised—it would not be too difficult, as has been suggested by the Attorney General—it would support the police, who called for the legislation. I urge members to vote for this bill and give the police what they want, which is the model legislation coming from

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state and commonwealth Attorneys General. Unfortunately, what will instead happen is that the bells will ring and members will be summonsed: “Come, all you Liberals—kill the bill!” It is wrong, Mr Speaker. I commend this bill to the house.

Question put and a division taken with the following result —

Ayes (25)

Ms L.L. Baker
Ms A.S. Carles
Mr A.J. Carpenter
Mr R.H. Cook
Mr J.N. Hyde
Mr W.J. Johnston
Mr F.M. Logan

Ms A.J.G. MacTiernan
Mr M. McGowan
Mrs C.A. Martin
Mr M.P. Murray
Mr A.P. O’Gorman
Mr P. Papalia
Mr J.R. Quigley

Ms M.M. Quirk
Mr E.S. Ripper
Mrs M.H. Roberts
Ms R. Saffioti
Mr T.G. Stephens
Mr C.J. Tallentire
Mr A.J. Waddell

Mr P.B. Watson
Mr M.P. Whitely
Mr B.S. Wyatt
Mr D.A. Templeman (*Teller*)

Noes (28)

Mr P. Abetz
Mr C.J. Barnett
Mr I.C. Blayney
Mr I.M. Britza
Mr T.R. Buswell
Mr G.M. Castrilli
Mr V.A. Catania

Dr E. Constable
Mr M.J. Cowper
Mr J.H.D. Day
Mr J.M. Francis
Mr B.J. Grylls
Dr K.D. Hames
Mrs L.M. Harvey

Mr A.P. Jacob
Dr G.G. Jacobs
Mr R.F. Johnson
Mr A. Krsticevic
Mr W.R. Marmion
Mr P.T. Miles
Ms A.R. Mitchell

Dr M.D. Nahan
Mr C.C. Porter
Mr D.T. Redman
Mr A.J. Simpson
Mr M.W. Sutherland
Mr T.K. Waldron
Mr J.E. McGrath (*Teller*)

Pair

Ms J.M. Freeman

Mr F.A. Alban

Question thus negatived.

Bill defeated.