

**CRIMINAL CODE AMENDMENT (IDENTITY CRIME) BILL 2009**

*Introduction and First Reading*

Bill introduced, on motion by **Mr C.C. Porter (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

*Second Reading*

**MR C.C. PORTER (Bateman — Attorney General)** [12.52 pm]: I move —

That the bill be now read a second time.

The Criminal Code Amendment (Identity Crime) Bill 2009 provides for an important reform proposed by the Liberal-National government. This bill will protect all Western Australians against a relatively new and most invidious and sophisticated criminal activity. I am referring to the misappropriation and misuse of another person's identity, often with the aid of new and increasingly sophisticated technology.

Perhaps the most high profile element of such crimes is the occurrence of automatic teller machine skimming. With the increasing proliferation of ATMs and the growing technical aptitude of various criminal elements, new opportunities have arisen for crime. Skimming is the act of electronically capturing information that can be used to confirm another's identity, often at a point of contact with an ATM, and for the purpose of stealing money from victims' bank accounts. However, while skimming may presently be the most high profile example of identity-related crime, the continuing advancement of technology—for example, through the development of the internet with online services and retail—along with increasing criminal technical aptitude means that there will be more and more opportunities for other forms of identity crime to become more prevalent. This bill will address this situation by amending the Criminal Code to create offences for the making, using, supplying or possession of identification material with the intent that the material be used to either commit, or facilitate the commission of, an indictable offence and the possession of equipment capable of making, using, supplying, or retaining identification material with the intent that that equipment be used to either commit or facilitate the commission of an indictable offence.

Members will be aware of the recent skimming operation conducted in this state in a number of suburban outlets of a well-known fast food chain. The facts with respect to that matter are relatively clear. Customers who used their debit cards and personal identification numbers at some electronic funds transfer at point of sale, EFTPOS, machines within these outlets had their account and personal identification number, PIN, details surreptitiously recorded by external criminal elements. The skimmed identification material was then used to access personal bank accounts and misappropriate funds from those customers. The economic impact of this type of crime cannot be underestimated. For example, this recent skimming operation is believed to have involved around \$2.5 million, while the Australian Crime Commission and the Australian Payments Clearing Association estimate that skimming and credit card fraud costs the Australian economy between \$100 million and \$145 million per year.

Other states and other countries have implemented legislative responses to counter and deter such identity crime. Therefore, the government has analysed, strengthened and improved upon the legislative developments in other jurisdictions. Even so, at the National Identity Crime Symposium held in Queensland last month, a prominent speaker from Europe expressly indicated that Australia was a prime target for international criminal syndicates engaged in skimming and related identity crimes. He articulated that this may be the case for several reasons, including a lack of public awareness over appropriate security measures and a perception that lenient sentences made Australia internationally appealing. It is this second aspect which the bill will address.

The proposed bill deals with three separate issues. First, definitional and interpretative provisions in the bill are drafted in a manner that ensures that the criminal behaviours that constitute essential elements of the proposed offences are effective, broad and robust. Secondly, the bill will make it an offence to make, use or supply identification material; possess identification material; or possess equipment capable of making, using, supplying or retaining identification material, for the purposes of committing or facilitating the commission of an indictable offence. Importantly, the bill will impose some of the most rigorous penalties in Australia for the commission of these offences. This reflects the government's appraisal of the seriousness of this type of offence. Finally, the bill will assist victims of identity crime. As with provisions found in legislation in other jurisdictions, the bill will provide the courts with the power to issue certificates to victims whose identity has been misused in the commission of these offences to act as proof of their identity being misused and so assist with any subsequent problems they may experience in either a personal or business capacity as a result of these crimes.

I will now briefly outline in more detail the second aspect of the bill, being the proposed offences. The first proposed offence relates to the illicit making, using or supplying of identification material. As amended, the

Western Australian Criminal Code will, for example, ensure that anyone who makes, uses or supplies identification material with the intention that the material be used for an indictable offence will be guilty of a crime. The government believes that offences of this nature, which go to the heart of what identity means to an individual on both a legal and a personal level, when combined with an understanding of their economic significance and the fact that these offences will be associated with other indictable offences, a penalty of seven years' imprisonment is appropriate. However, in instances where identification material is used to attempt to commit an indictable offence where the penalty to attempt to commit that offence is greater than seven years' imprisonment, that higher penalty will apply. To illustrate, the seven years' imprisonment penalty might apply to a person who illicitly uses identification material to pay a hotel bill. However, the greater penalty option could be applicable where it is proven that the material was to be used directly in the commission of a more serious offence—for example, murder or attempted murder. The bill also addresses the issue of someone knowingly and willingly providing their identification material to another person with the knowledge that the other person will use it to commit a serious crime.

The second proposed offence relates to the illegal possession of identification material. As such, it will attract a penalty of five years' imprisonment. A summary conviction penalty of 24 months' imprisonment and a fine of \$24 000 also will apply to the offence of possession.

The third proposed offence relates to the technological aspects of identity crime. As such, the bill will make illegal the possession of equipment that can be used to make, use, retain or supply identification material. The proposed offence makes clear that the possession of such equipment will be illegal only when it is intended to be used to commit, or facilitate the commission of, an indictable offence, and as such the government has been mindful to ensure that legitimate owners of such or similar equipment, such as financial institutions and information technology companies, are not adversely impacted by these provisions. This possession of equipment offence will also carry a penalty of five years' imprisonment as well as a summary conviction penalty. In creating these offences the government's intention is to target preparatory behaviour to the offences of fraud and stealing. Apart from its economic impact, identity crime leaves behind victims who can be deeply affected by the misuse of their identity. Consequently, the bill empowers courts to issue certificates to individuals whose identity has been illegally used for the commission of an offence to assist with any subsequent problems they may experience in either a personal or business capacity as a result of these crimes.

Identity crime is a fast evolving criminal issue, but this bill further illustrates the government's commitment to effectively deal with the new and complex elements of criminality so that Western Australians may feel confident both in using their own identification material and in the administration of law and order in this state.

I commend the bill to the house.

Debate adjourned, on motion by **Ms R. Saffioti**.