

**Criminal Code Amendment (Identity Crime)
Bill 2009**

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**Criminal Code Amendment (Identity Crime)
Bill 2009**

A Bill for

An Act to amend *The Criminal Code*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Criminal Code Amendment (Identity Crime)*
3 *Act 2009*.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;
8 (b) the rest of the Act — on a day fixed by proclamation.

9 **3. *The Criminal Code* amended**

10 This Act amends *The Criminal Code*.

11 **4. Part VI Division III heading replaced**

12 Delete the heading to Part VI Division III and insert:

13

14 **Division III — Forgery and like offences: Identity**
15 **crime: Personation**

16

17 **5. Chapter LI inserted**

18 After Chapter L insert:

19

20 **Chapter LI — Identity crime**

21 **489. Terms used**

22 In this Chapter —

23 *digital signature* means encrypted electronic data
24 intended for the exclusive use of a particular person as
25 a means of identifying the person as the sender of an
26 electronic communication;

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electronic communication has the meaning given in the *Electronic Transactions Act 2003* section 5;

identification information means information relating to a person, whether living or dead or whether real or fictitious, that is capable of being used, whether alone or in conjunction with other information, to identify or purportedly identify the person and includes —

- (a) a name, address, date of birth or place of birth;
- (b) information about a person’s marital status;
- (c) information that identifies a person as another person’s relative;
- (d) a driver’s licence number;
- (e) a passport number;
- (f) biometric data;
- (g) a voice print;
- (h) information stored on a credit card or debit card;
- (i) a financial account number, user name or password;
- (j) a digital signature;
- (k) a series of numbers or letters, or both numbers and letters, intended for use as a means of personal identification;
- (l) an Australian Business Number, as defined in the *A New Tax System (Australian Business Number) Act 1999* (Commonwealth);

identification material means —

- (a) identification information; or
- (b) a record that contains identification information;

voice print means electronic data recording the unique characteristics of a person’s voice.

- 1 **490. Making, using or supplying identification material**
2 **with intent to commit indictable offence**
- 3 (1) A person who makes, uses or supplies identification
4 material with the intention that the material will be
5 used, by the person or some other person, to commit an
6 indictable offence or to facilitate the commission of an
7 indictable offence is guilty of a crime and is liable to
8 the penalty that is the greater of —
- 9 (a) imprisonment for 7 years; or
10 (b) the penalty to which the person would have
11 been liable if convicted of attempting to
12 commit the indictable offence.
- 13 Alternative offence: s. 491(1).
- 14 (2) For the purposes of subsection (1), it does not matter
15 that it is impossible in fact to commit the indictable
16 offence.
- 17 (3) It is not a defence to a charge of an offence under
18 subsection (1) involving identification material relating
19 to a person other than the accused person that the other
20 person consented to the making, use or supply of the
21 identification material by the accused person.
- 22 **491. Possession of identification material with intent to**
23 **commit indictable offence**
- 24 (1) A person who is in possession of identification material
25 with the intention that the material will be used, by the
26 person or some other person, to commit an indictable
27 offence or to facilitate the commission of an indictable
28 offence is guilty of a crime and is liable to
29 imprisonment for 5 years.
- 30 Summary conviction penalty: imprisonment for
31 24 months and a fine of \$24 000.

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- 1 (2) For the purposes of subsection (1), it does not matter
2 that it is impossible in fact to commit the indictable
3 offence.
- 4 (3) It is not a defence to a charge of an offence under
5 subsection (1) involving identification material relating
6 to a person other than the accused person that the other
7 person consented to the possession of the identification
8 material by the accused person.
- 9 **492. Possession of identification equipment with intent**
10 **that it be used to commit indictable offence**
- 11 (1) In this section —
12 *identification equipment* means any thing capable of
13 being used to make, use, supply or retain identification
14 material.
- 15 (2) A person who is in possession of identification
16 equipment with the intention that the equipment will be
17 used, by the person or some other person, to commit an
18 indictable offence or to facilitate the commission of an
19 indictable offence is guilty of a crime and is liable to
20 imprisonment for 5 years.
21 Summary conviction penalty: imprisonment for
22 24 months and a fine of \$24 000.
- 23 (3) For the purposes of subsection (2), it does not matter
24 that it is impossible in fact to commit the indictable
25 offence.
- 26 **493. Attempt offences do not apply**
- 27 Section 552(1) does not apply to an offence against
28 section 490, 491 or 492.

- 1 **494. Court may grant certificate to victim of identity**
2 **offence**
- 3 (1) In this section —
- 4 *identification material*, of a victim, means
5 identification material relating to the victim;
6 *identity offence* means an offence against this
7 Division;
- 8 *victim*, of an identity offence, means a person whose
9 identification material has been used, without the
10 person's consent, in connection with the commission of
11 the offence.
- 12 (2) If a court convicts a person of an identity offence, the
13 court may issue a certificate to a victim of the offence
14 setting out —
- 15 (a) the identity offence to which the certificate
16 relates; and
- 17 (b) the name of the victim; and
- 18 (c) any matter prescribed by regulations made
19 under subsection (6); and
- 20 (d) any other matter the court considers relevant.
- 21 (3) The court may issue the certificate on its own initiative
22 or on an application made by the prosecutor or the
23 victim.
- 24 (4) Unless the offender is convicted of the identity offence
25 on a plea of guilty, the certificate must not be issued to
26 the victim until —
- 27 (a) the end of any period allowed for an appeal
28 against conviction; or
- 29 (b) if an appeal is commenced — the end of any
30 proceedings on the appeal.
- 31 (5) A certificate issued under this section is, in the absence
32 of evidence to the contrary, evidence of its contents.

- 1 (6) A court, for good reason and either on its own initiative
2 or on an application made by the prosecutor, may
3 cancel a certificate it has issued under this section.
- 4 (7) The Governor may make regulations providing for any
5 matter to be set out in certificates issued under this
6 section.

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