

Western Australia

# **Criminal Code (Identity Theft) Amendment Bill (No. 2) 2009**

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Western Australia

LEGISLATIVE ASSEMBLY

*(Introduced by Mr Quigley, MLA)*

**Criminal Code (Identity Theft) Amendment Bill  
(No. 2) 2009**

**A Bill for**

**An Act to amend *The Criminal Code* to render unlawful obtaining or dealing with another entity's identification and/or the possession of equipment capable of copying another person's identification documentation for the purpose of committing an offence.**

The Parliament of Western Australia enacts as follows:

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1   **1.     Short title**

2           This Act is the *Criminal Code (Identity Theft) Amendment Act*  
3           *(No. 2) 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 the day after that day.

9   **3.     Act amended**

10          This Act amends *The Criminal Code*.

11   **4.     Chapter XLIVB inserted**

12          Insert after Chapter XLIVA:  
13

14                           **Part XLIVB — Obtaining or dealing with**  
15                           **identification information**

16   **440B.   Interpretation**

17          In this Part —

18           *criminal purpose* means the purpose of committing, or  
19           facilitating the commission of, an offence;

20           *digital signature* means encrypted electronic or  
21           computer data intended for the exclusive use of a  
22           particular person as a means of identifying himself or  
23           herself as the sender of an electronic communication;

24           *electronic communication* means a communication  
25           transmitted in the form of electronic or computer data;

1            **false identity** — a person assumes a false identity if the  
2            person pretends to be, or passes himself or herself off  
3            as, some other person. The other person may be —

- 4            (a) living or dead;  
5            (b) real or fictional;  
6            (c) natural or corporate;

7            **personal identification information** — a person's  
8            personal identification information is information used  
9            to identify the person, and includes —

- 10           (a) in the case of a natural person —  
11                (i) information about the person such as his  
12                or her name, address, date or place of  
13                birth, marital status, relatives and so on;  
14                (ii) the person's driver's licence or driver's  
15                licence number;  
16                (iii) the person's passport or passport  
17                number;  
18                (iv) biometric data relating to the person;  
19                (v) the person's voice print;  
20                (vi) the person's credit or debit card, its  
21                number, and data stored or encrypted on  
22                it;  
23                (vii) any means commonly used by the  
24                person to identify himself or herself  
25                (including a digital signature);  
26                (viii) a series of numbers or letters (or a  
27                combination of both) intended for use as  
28                a means of personal identification;

- 29           (b) in the case of a body corporate —  
30                (i) its name;  
31                (ii) its ABN;

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- 1 (iii) the number of any bank account  
2 established in the body corporate's  
3 name or of any credit card issued to the  
4 body corporate;

5 ***prohibited material*** means anything (including  
6 personal identification information) that enables a  
7 person to assume a false identity or to exercise a right  
8 of ownership that belongs to someone else to funds,  
9 credit, information or any other financial or  
10 non-financial benefit;

11 ***serious criminal offence*** means —

- 12 (a) an indictable offence; or  
13 (b) an offence prescribed by regulation for the  
14 purposes of this definition;

15 ***voice print*** means computer data recording the unique  
16 characteristics of a person's voice;

17 ***victim*** means a person whose identity has been  
18 assumed, or personal identification information has  
19 been used, without the person's consent, in connection  
20 with the commission of the offence.

21 **440C. False identity etc.**

- 22 (1) A person who —  
23 (a) assumes a false identity; or  
24 (b) falsely pretends —  
25 (i) to have particular qualifications; or  
26 (ii) to have, or to be entitled to act in, a  
27 particular capacity,  
28 makes a false pretence to which this section  
29 applies.

- 1           (2) A person who assumes a false identity makes a false  
2           pretence to which this section applies even though the  
3           person acts with the consent of the person whose  
4           identity is falsely assumed.
- 5           (3) A person who makes a false pretence to which this  
6           section applies intending, by doing so, to commit, or  
7           facilitate the commission of, a serious criminal offence  
8           is guilty of an offence and liable to the penalty  
9           appropriate to an attempt to commit the serious  
10          criminal offence.

11          **440D. Misuse of personal identification information**

- 12          (1) A person who makes use of another person's personal  
13          identification information intending, by doing so, to  
14          commit, or facilitate the commission of, a serious  
15          criminal offence, is guilty of an offence and liable to  
16          the penalty appropriate to an attempt to commit the  
17          serious criminal offence.
- 18          (2) This section applies irrespective of whether the person  
19          whose personal identification information is used —  
20               (a) is living or dead; or  
21               (b) consents to the use of the personal  
22               identification information.

23          **440E. Prohibited material**

- 24          (1) A person who —  
25               (a) produces prohibited material; or  
26               (b) has possession of prohibited material,  
27          intending to use the material, or to enable another  
28          person to use the material, for a criminal purpose is  
29          guilty of an offence.  
30          Maximum penalty: Imprisonment for 3 years.

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- 1           (2) A person who sells (or offers for sale) or gives (or  
2           offers to give) prohibited material to another person,  
3           knowing that the other person is likely to use the  
4           material for a criminal purpose is guilty of an offence.  
5           Maximum penalty: Imprisonment for 3 years.
- 6           (3) A person who is in possession of equipment for making  
7           prohibited material intending to use it to commit an  
8           offence against this section is guilty of an offence.  
9           Maximum penalty: Imprisonment for 3 years.
- 10          **440F. Attempt offence excluded**
- 11           A person cannot be convicted of an attempt to commit  
12           an offence against this Part.
- 13          **440G. Application of Part**
- 14           This Part does not apply —
- 15           (a) to misrepresentation by a person under the age  
16           of 18 years for the purpose of —
- 17               (i) obtaining alcohol, tobacco or any other  
18               product not lawfully available to  
19               persons under the age of 18; or
- 20               (ii) gaining entry to premises to which  
21               access is not ordinarily allowed to  
22               persons under the age of 18; or
- 23           (b) to any thing done by a person under that age to  
24           facilitate such a misrepresentation.
- 25          **440H. Certificate for victims of identify theft**
- 26           (1) A court that finds a person guilty of an offence  
27           involving —
- 28               (a) the assumption of another person’s identity; or  
29               (b) the use of another person’s personal  
30               identification information,



1                    may, on application by a victim of the offence, issue a  
2                    certificate under subsection (2).

3                    (2) The certificate is to give details of —

4                            (a) the offence; and

5                            (b) the name of the victim; and

6                            (c) any other matters considered by the court to be  
7                            relevant.

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