

# CRIMINAL CODE (IDENTITY THEFT) AMENDMENT BILL 2009 (EM45)

*(Introduced by Mr Quigley MLA)*

## EXPLANATORY MEMORANDUM

Society today requires all of us from time to time to identify ourselves. Traditionally our identification was by signature but today it is by signature, photograph, driver's license or passport. With the advent of computers and the advancement of technology the means of identification now include computer personal identification numbers, scanned fingerprints, eye (iris) scans, computer images of our signatures and voice recognition to name a few.

All of our business transactions whether by person to person or on a computer require us to identify ourselves. When others have acquired our identify details and used them in the commission of an offence they have been prosecuted for stealing or forgery but the act of acquiring our identity by a third party even where the acquisition was for the purpose of committing an offence the act of obtaining the information was not necessarily against the law. This Bill addresses that issue and renders it an offence to acquire someone's identity for the purpose of committing an indictable offence.

The clauses of the Bill for the most part replicate similar provision in the Queensland Criminal Code which was approved by the State and Commonwealth as being an adequate mode for the legislation. Provisions in clause 2 were added to the Queensland model as this offence was also recommended by the State and Commonwealth's Attorney General.

The Bill amends The Criminal Code of Western Australia by making it an offence to:

- Obtain or deal with another's identification information for the purposes of committing an indictable offence;
- Makes it offence to possess equipment capable of being able to make identification material to be used in offence against this Act; and
- Enables a judge after recording a conviction against the 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 other information that that would help the victim explain it to financial institutions, credit providers, service providers etc.

**Clause 1** Short Title

**Clause 2** Commencement Clause – sections 1 and 2 commence upon the day which the Act receives Royal assent and the rest of the act the day after

**Clause 3** This Act amends The Criminal Code

**Clause 4** Inserts a new section 440(B) and 10 subsections into The Criminal Code

Subsection (1) Creates an Offence for any person to obtain or deal with another entity's identification information for the purposes of committing an indictable offence. Maximum Penalty of 3 years imprisonment.

Subsection (2) Creates an offence to possess equipment capable of making identity information for the purpose of committing an offence against this section.

Subsection (3) This section applies even if the actual committing of the offence was not possible and whether or not the person to whom the information relates consented.

Subsection (4) Subsection 1 does not apply to possessing or dealing in your own identification.

Subsection (5) It does not matter whether the other entity is alive or dead, exists or does not exist, consents or does not consent to the obtaining or dealing in the information.

Subsection (6) A judge sentencing an offender for an offence against subsection 1 may issue a certificate stating the offence and the details under which the other entity's identification information was obtained and used.

Subsection (7) The judge may give the certificate of his own initiative on the application of the prosecutor or the other person.

Subsections (8) and (9) The judge's certificate can only be given after the court proceedings have been finished including any appeal.

Subsection (10) Definition of terms.