

Criminal Code Amendment (Identity Crime)
Bill 2009

EXPLANATORY MEMORANDUM

Clause Notes

- Clause 1 sets out the short title of the Bill.
- Clause 2 provides that the provisions in sections 1 and 2 of the Bill come into operation on the day the Bill receives Royal Assent, while the provisions in the rest of the Act come into operation on a fixed day of proclamation.
- Clause 3 sets out that the Bill amends the *Criminal Code* (WA).
- Clause 4 sets out that the Bill will amend the *Criminal Code* by deleting the heading to Part VI Division III and insert the new heading:

Division III – Forgery and like offences: Identity crime: Personation

- Clause 5 inserts a new Chapter LI into Part VI Division III of the *Criminal Code* to deal with identity crime.

New section 489

Provides definitions of *digital signature, electronic communication, identification information, identification material* and *voice print*.

New section 490(1)

Creates a new offence of making, using or supplying identification material intending that the material be used to commit, or facilitate the commission of, an indictable offence. "Making" is intended to cover original creation and manufacture, as well as reproduction of information.

The offence is punishable by a penalty that is the greater of

- (a) seven years' imprisonment
- OR
- (b) the penalty to which the person would have been liable if convicted of attempting to commit the indictable offence.

It is also provided that a person charged with an offence against new section 490 (of making et cetera information material) may be found guilty of the

lesser offence in new section 491 (of possessing information material), if appropriate.

New section 490(2)

Covers the hypothetical possibility that the indictable offence was actually impossible to commit, for example due to unknown factual circumstances.

New section 490(3)

Provides that it is irrelevant whether the person whose identification material is used in the identity offence consented to the use of their material or not.

New section 491(1)

Creates a new offence of possessing identification material intending that the material be used to commit, or facilitate the commission of, an indictable offence.

The offence is punishable by a penalty of five years imprisonment and has a summary conviction penalty of 24 months' imprisonment and a fine of \$24,000.

New section 491(2)

Covers the hypothetical possibility that the indictable offence was actually impossible to commit, for example due to unknown factual circumstances.

New section 490(3)

Provides that it is irrelevant whether the person whose identification material is used in the identity offence consented to the use of their material or not.

New section 492(1)

Provides a definition for *identification equipment*.

New section 492(2)

Creates a new offence of possessing identification equipment intending that the equipment be used to commit, or facilitate the commission of, an indictable offence.

The offence is punishable by a penalty of five years imprisonment and has a summary conviction penalty of 24 months' imprisonment and a fine of \$24,000.

New section 492(3)

Covers the hypothetical possibility that the indictable offence was actually impossible to commit, for example due to unknown factual circumstances.

New section 493

Qualifies that as the offences in 490, 491 and 492 already contain attempt provisions, then 552(1) of the *Criminal Code* does not apply.

New section 494(1)

Provides definitions of *identification material*, *identity offence*, and *victim*.

New section 494(2)

Provides that on convicting a person for an identity offence, then courts may issue a certificate to a victim of that offence which must set out certain matters, including the offence to which the certificate relates, the name of the victim, and any other matters the court considers relevant or prescribed by regulations.

New section 494(3)

Provides that the court may issue a certificate either on its own initiative, or on application by the prosecution, or the victim.

New section 494(4)

Provides that for the protection of the defendant, certificates may only be issued once all proceedings against the defendant are finalised.

New section 494(5)

Provides that, for official purposes, for example when being used by banks or financial institutions, the certificates have legitimate currency.

New section 494(6)

Provides regulation-making power in relation to the certificates.