

# EXPLANATORY MEMORANDUM

## CRIMINAL CODE (IDENTITY THEFT) AMENDMENT BILL (No. 2) 2009 (E 92)

*(Introduced by Mr John Quigley MLA)*

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 identity 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 offence.

The clauses of the Bill for the most part replicate the provisions of The Criminal Law Consolidation (Identity Theft) Amendment Act 2003 of South Australia. This Act formed the basis of the model legislation recommended by the State and Commonwealth Attorneys General meeting in March 2008.

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

- Assume a false identity, and makes a false pre-tense in relation to the false identity that has been assumed.
- Produce, possess or sell prohibited material.
- Possess equipment for making prohibited material.
- Enable 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 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 new sections 440B to 440H into *The Criminal Code*—

**Section 440B** the interpretation clause defines amongst other things: false identity, personal information, prohibited material.

**Section 440C** a person who assumes a false identity and makes a false pretense to commit a serious criminal offence is liable to the same penalty as an attempt to commit that serious offence.

**Section 440D** a person who makes use of another person’s personal identification to facilitate the commission of a serious offence, commits an offence and is liable for the same punishment as a person who commits that offence.

**Section 440E** prohibited material, a person who produces, has possession of or sells prohibited material is guilty of an offence and is liable for imprisonment for 3 years and a person who is in possession of equipment for the making of prohibited material with the intention of using it to commit an offence against this section is guilty of an offence with maximum imprisonment of three years.

**Section 440F** a person cannot be convicted of an attempt to commit an offence against these provisions.

**Section 440G** these provisions do not apply to persons under the age of 18 years attempting to obtain alcohol, tobacco or other products who are only available to persons over 18 years, nor to the use of the false identity of gaining access to premises where people under the age of 18 years are not ordinarily permitted entry.

**Section 440H** after convicting an offender the judge may issue to the victim a certificate giving details of the offence, the name of the victim and any other relevant matters for example the dates between which the false identity had been assumed.