

[Act 2001 No 20]



New South Wales

# Crimes Amendment (Computer Offences) Bill 2001

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

### Overview of Bill

The object of this Bill is to enact modern computer offences under the *Crimes Act 1900*.

The new offences follow those contained in the Model Criminal Code recommended by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General (Chapter 4 Damage and computer offences, Report of the Committee issued February 2001).

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\* Amended in committee—see table at end of volume.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendment to the *Criminal Procedure Act 1986* set out in Schedule 2.

**Schedule 1** contains the amendments to the *Crimes Act 1900*.

Part 6 of the Act at present contains the following computer offences:

<b>Section</b>	<b>Offence</b>	<b>Max penalty</b>
310	Damaging data in computer	10 years and/or 1,000 penalty units
309 (1)	Unlawful access to data in computer	6 months and/or 50 penalty units
309 (2)	Unlawful access to data in computer—intent to defraud/dishonestly obtain benefit or cause loss/injury	2 years and/or 500 penalty units
309 (3)	Unlawful access to data in computer—knowledge data is confidential	2 years and/or 500 penalty units
309 (4)	Continue to examine data in computer—ought reasonably to know data confidential	2 years and/or 500 penalty units

Those computer offences are to be replaced by the following computer offences:

<b>Section</b>	<b>Offence</b>	<b>Max penalty</b>
308C	Cause unauthorised computer function with intention to commit serious offence (comprising unauthorised access to data, unauthorised modification of data or unauthorised impairment of electronic communication)	The maximum penalty applicable for commission of serious indictable offence
308D	Unauthorised modification of data with intent to cause impairment	10 years
308E	Unauthorised impairment of electronic communication to or from computer	10 years
308F	Possession of data with intent to commit computer offence	3 years
308G	Producing, supplying or obtaining data with intent to commit computer offence	3 years
308H	Unauthorised access to or modification of restricted data in computer (summary offence)	2 years
308I	Unauthorised impairment of data held in computer disk, credit card or other device (summary offence)	2 years

Under sections 15 and 16 of the *Crimes (Sentencing Procedure) Act 1999*, the court may impose a fine for any such offence instead of or in addition to a sentence of imprisonment, namely 1,000 penalty units (currently \$110,000) or, in the case of a corporation, 2,000 penalty units (currently \$220,000).

An explanation of the new offences and the policy considerations concerned is contained in the report on Chapter 4 (Damage and computer offences) of the Model Criminal Code Officers Committee.

**Schedule 2** contains an amendment to the *Criminal Procedure Act 1986* that is consequential on the amendments contained in Schedule 1. The amendment provides that all of the new computer offences that are indictable and carry a maximum penalty of 10 years imprisonment or less are to be disposed of summarily (with a maximum penalty of 2 years imprisonment) unless the prosecuting authority or the accused otherwise elects.