

CRIMES (COMPUTERS AND FORGERY) AMENDMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

- (a) to make further provision relating to the use of computers to obtain money or a valuable thing or financial advantage by deception; and
- (b) to create offences relating to unauthorised access to, and damaging of data in, computers; and
- (c) to make fresh provision with respect to forgery and similar offences.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

Obtaining money etc. by deception

Schedule 1 (2) substitutes the definition of “deception” in section 178BA (2) of the Act (obtaining money etc. by deception) to include acts done with the intention of causing computer systems or certain machines to make unauthorised responses.

The amendment will enable a person who, for example, obtains access dishonestly to a computer system without making any payment where payment would normally be required, to be prosecuted for obtaining financial advantage by deception.

Forgery—repealed provisions

Schedule 1 (3)–(9) repeals a number of sections containing offences relating to forgery of documents and makes consequential amendments to various short headings. The repealed provisions (other than section 257) will be replaced by proposed sections 299–306. The provisions of section 257 will be replaced by proposed section 184A which re-enacts section 257 in modern form.

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The sections to be repealed are as follows:

- section 252 (Forgeries not specially provided for)
- section 254 (Signature of Governor, Minister of the Crown etc.)
- section 256 (Transfer of certain stock, or power of attorney relating thereto)
- section 257 (Personating owner of stock or property)
- section 258 (Falsifying books of public funds)
- section 259 (Public servant making false dividend warrants etc.)
- section 261 (Making plates etc. like those used for Exchequer bills etc.)
- section 262 (Making paper like that used for Exchequer bills etc.)
- section 263 (Having paper etc. to be used for Exchequer bills etc.)
- section 264 (Forging stamps or possessing false dies etc.)
- section 272 (Forging deeds)
- section 273 (Forging bills, notes or orders, receipts for goods etc.)
- section 274 (Signing bill, note etc. by procuration without authority)
- section 275 (Obliterating crossings on cheques)
- section 276 (Forging debentures)
- section 277 (Forging instruments etc. made by Judges etc. or signature thereto)
- section 279 (Term "Court"—ss. 280–284)
- section 280 (Forging records etc. of any Court)
- section 281 (Forging seal or stamp on records etc.)
- section 282 (Forging copy or certificate of record etc.)
- section 283 (Serving etc. forged process)
- section 284 (Forging documents etc. used as evidence)
- section 286 (Forgery of signature to certificate etc. admissible in evidence of facts relating to trials etc.)
- section 287 (Clerk of Court or other officer wilfully certifying false copy of record of conviction etc. or of public document)
- section 288 (Forgery of seal etc. on such copy etc. or on examined copy of any document inspected by order of Judge)
- section 290 (Forging signature or seal on copy admissible in evidence of treaty etc. of a State or proceeding of a Court outside New South Wales)
- section 292 (Forging instruments made evidence by statute)
- section 293 (Forgery of deeds etc. made etc. under registration legislation)
- section 294 (Acknowledging recognizances etc. in the name of another)
- section 295 (Forging marriage certificate etc.)

Schedule 1 (13) amends the Tenth Schedule to the Act to omit references to the repealed provisions.

Forgery—proposed sections 299–307

Schedule 1 (10) inserts proposed Chapter 2 (sections 299–307) into Part 5 of the Act.

Proposed sections 299–306 create 5 offences relating to the falsification of instruments. The provisions closely follow provisions in Part 1 of the Forgery and Counterfeiting Act 1981 of the United Kingdom and will replace the existing provisions of the Act relating to forgery of documents to be repealed by Schedule 1 (5).

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The existing provisions contain a number of offences differentiated by the nature of the document forged and carrying different penalties. The new provisions simplify the law by providing widely defined offences to cover conduct possessing the same basic features in place of separate offences each covering a particular set of circumstances.

The provisions will prohibit conduct of the kind constituting forgery in relation to instruments such as credit cards and modern devices such as discs and tapes in or on which information or instructions are stored. The new provisions will overcome any doubt as to whether the existing forgery offences apply to such things.

Existing forgery offences require that it be shown that an instrument was forged with intent to defraud. In the case of the new offences relating to false instruments it will be necessary to show an intention to induce someone to accept a false instrument as genuine and by reason of that, to do or refrain from doing some act to the prejudice of that person or another person (for example, an act that will result in the person's loss of money or property or of an opportunity to obtain some financial advantage).

Section 299 specifies the circumstances in which an instrument can be found to be false because it purports to be what it is not. An instrument is defined to cover any means of storing information on a device (for example, microfilm records of bank accounts and transactions, instructions for the payment or crediting of money put on magnetic tape and discs containing information on which a computer can operate) and to include a card by means of which property or credit can be obtained.

Section 300 creates the offences of making or using a false instrument in the circumstances described above.

Section 301 creates the offences of making or using a copy of a false instrument in the circumstances described above.

Section 302 creates an offence of possessing a false instrument in the circumstances described above.

Section 303 deals with cases where a false instrument is made or used to cause a machine to respond as if the instrument were genuine (rather than inducing a person to accept it as genuine and act on it). An example is the use of a false card to cause a bank teller machine to dispense money.

Section 304 sets out the circumstances in which an instrument will be treated as being false for the purposes of the Part.

Section 305 defines when an act or omission is "to a person's prejudice" for the purposes of the Part.

Section 306 provides that, in proceedings for an offence against the Part, it is not necessary to allege that the accused intended to induce a particular person to accept a false instrument as genuine or a copy of a false instrument as a copy of a genuine one.

Section 307 abolishes the common law offence of forgery.

Schedule 1 (1) contains a consequential amendment to section 1 (short title and contents of Act).

Offences relating to computers

Schedule 1 (11) inserts proposed Part 6 into the Act.

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The provisions of the proposed Part (sections 308–310) create a number of offences relating to computer trespass or “hacking”. The provisions will prohibit persons from obtaining unauthorised access to data stored in computers and make it an offence to damage data in a computer in certain circumstances. The activities prohibited will be unlawful whether or not accompanied by a fraudulent act or intent.

The proposed Part includes the following provisions:

Section 308 contains an interpretation provision.

Section 309 creates offences of, without authority or lawful excuse, intentionally obtaining access to data stored in a computer. A person who does so knowing, or who ought to have known, that the data relates to certain categories of information (for example, the personal affairs of a person or law enforcement) or who continues to examine data after becoming aware that it falls within those categories is liable to higher penalties.

Section 310 creates offences of intentionally damaging without authority or lawful excuse data in a computer (for example, by erasure of data in, or insertion of data into, a computer) and of interfering with or interrupting or obstructing the lawful use of a computer.

Summary proceedings for offences relating to false instruments and computers

Schedule 1 (12) amends section 476 (indictable offences punishable summarily with consent of accused) so that offences under proposed sections 300–302, 309 (2)–(4) and 310 may be dealt with summarily and so as to omit references to sections to be repealed by the proposed Act.
