

New South Wales

Crimes Amendment (Fraud and Forgery) Bill 2009

Explanatory note

Overview of Bill

The object of this Bill is to:

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 the date of assent to the proposed Act.

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

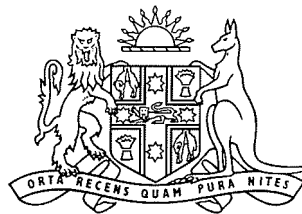
Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

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No. , 2009

A Bill for

An Act to amend the *Crimes Act 1900* with respect to fraud, forgery and other related offences; and to make a related amendment to the *Criminal Procedure Act 1986*.

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Clause 1 Crimes Amendment (Fraud and Forgery) Bill 2009

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Fraud and Forgery) Act 2009*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

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Crimes Amendment (Fraud and Forgery) Bill 2009

Principal amendments to Crimes Act 1900 No 40

Schedule 1

Schedule 1 Principal amendments to Crimes Act 1900 No 40

[1] Part 4AA

Insert after section 193 (re-numbered as section 192A by Schedule 2):

Part 4AA Fraud

192B Deception—meaning (cf sec 17.1 Model Code; sec 133.1 Cth Code)

- (1) In this Part, *deception* means any deception, by words or other conduct, as to fact or as to law, including:
 - (a) a deception as to the intentions of the person using the deception or any other person, or
 - (b) conduct by a person that causes a computer, a machine or any electronic device to make a response that the person is not authorised to cause it to make.
- (2) A person does not commit an offence under this Part by a deception unless the deception was intentional or reckless.

192C Gain or loss—meaning (cf sec 14.3 Model Code; sec 130.1 Cth Code)

- (1) In this Part:

gain means a gain in property (whether temporary or permanent) and includes keeping what one has, and *obtaining a gain* includes:

 - (a) obtaining a gain for oneself or for another person, and
 - (b) inducing a third person to do something that results in oneself or another person obtaining a gain.

loss means a loss in property (whether temporary or permanent) and includes not getting what one might otherwise get, and *causing a loss* means causing a loss to another.
- (2) For the purposes of this Part, a gain or loss in property includes a gain or loss relating to the supply of services.

192D Obtaining property by deception (cf sec 17.2 Model Code; sec 134.1 Cth Code)

- (1) A person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.
- (2) For the purposes of this section, a person *obtains property* if:

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- (a) the person obtains ownership, possession or control of the property for himself or herself or for another person, or
 - (b) the person enables ownership, possession or control of the property to be retained by himself or herself or by another person, or
 - (c) the person induces a third person to do something that results in the person or another person obtaining or retaining ownership, possession or control of the property.
- (3) For the purposes of this section, ***property belongs*** to a person if:
- (a) the person has possession or control of the property, or
 - (b) the person has a proprietary right or interest in the property (not being an equitable interest arising only from an agreement to transfer or grant an interest or from a constructive trust).
- (4) If property is subject to a trust, the persons to whom it belongs include any person having a right to enforce the trust.
- (5) A person's obtaining of property belonging to another may be dishonest even if the person is willing to pay for the property.
- (6) A person obtaining property belonging to another without meaning the other permanently to lose the thing itself has, nevertheless, the intention of permanently depriving the other of it if the person's intention is to treat the thing as his or her own to dispose of regardless of the other's rights. A borrowing or lending of the property may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.
- (7) Without limiting the generality of subsection (6), if:
- (a) a person has possession or control (lawfully or not) of property belonging to another, and
 - (b) the person parts with the property under a condition as to its return that the person may not be able to perform, and
 - (c) the parting is done for the purposes of his or her own and without the other's authority,
- the parting amounts to treating the property as his or her own to dispose of regardless of the other's rights.
- (8) A person may be convicted of an offence against this section involving all or any part of a general deficiency in money or other property even though the deficiency is made up of any number of particular sums of money or items of other property that were obtained over a period of time.

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- (9) A conviction for an offence against this section is an alternative verdict to a charge for the offence of larceny, or any offence that includes larceny, and a conviction for the offence of larceny, or any offence that includes larceny, is an alternative verdict to a charge for an offence against this section.

192E Obtaining financial advantage by deception (cf sec 17.3 Model Code; sec 134.2 Cth Code)

- (1) A person who by any deception dishonestly obtains any financial advantage is guilty of an offence.
Maximum penalty: Imprisonment for 10 years.
- (2) In this section, **obtain** a financial advantage includes:
- (a) obtain a financial advantage for oneself or another person, and
 - (b) induce a third person to do something that results in oneself or another person obtaining a financial advantage.

192F Obtaining property or financial advantage by false or misleading statements (cf sec 178BB Crimes Act)

- (1) A person who makes or publishes any statement (whether or not in writing) that is false or misleading in a material particular:
- (a) knowing that, or being reckless as to whether, the statement is false or misleading in a material particular, and
 - (b) with the intention of obtaining property or a financial advantage,
- is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (2) In this section, **obtaining** property or a financial advantage includes:
- (a) obtaining property or a financial advantage for oneself or another person, and
 - (b) inducing a third person to do something that results in oneself or another person obtaining property or a financial advantage.

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192G Dishonestly obtaining gain or causing loss (cf sec 135.1 Cth Code)

A person who dishonestly does anything with the intention of:

- (a) obtaining a gain from another person, or
- (b) causing a loss to another person,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

192H Identity fraud

(1) **Dealing with identification information**

A person who:

- (a) deals in identification information, and
- (b) is reckless about the use of the information to commit, or to facilitate the commission of, an indictable offence,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(2) **Possession of identification information**

A person who:

- (a) possesses identification information, and
- (b) is reckless about the use of the information to commit, or to facilitate the commission of, an indictable offence,

is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

(3) **Possession of equipment etc to make identification documents or things**

A person who:

- (a) possesses any equipment, material or other thing that is capable of being used to make a document or other thing containing identification information, and
- (b) intends that the document or other thing made will be used to commit, or to facilitate the commission of, an indictable offence,

is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

(4) This section does not apply to dealing in a person's own identification information.

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- (5) It is not an offence to attempt to commit an offence against this section.
- (6) Section 309A of the *Criminal Procedure Act 1986* enables a victim of an offence against this section to obtain a certificate from a court that such an offence has been committed to assist with problems the offence has caused in relation to the victim's personal or business affairs.
- (7) In this section:
- deal* in identification information includes make, supply or use any such information.
- identification information* means information relating to a person (whether living or dead, real or fictitious, or an individual or body corporate) that is capable of being used (whether alone or in conjunction with other information) to identify or purportedly identify the person, and includes the following:
- (a) a name or address,
 - (b) a date or place of birth, marital status, relative's identity or similar information,
 - (c) a driver licence or driver licence number,
 - (d) a passport or passport number,
 - (e) biometric data,
 - (f) a voice print,
 - (g) a credit or debit card, its number or data stored or encrypted on it,
 - (h) a financial account number, user name or password,
 - (i) a digital signature,
 - (j) a series of numbers or letters (or both) intended for use as a means of personal identification,
 - (k) an ABN.

192I Special provisions with respect to geographical jurisdiction

- (1) This section applies for the purposes of, but without limiting, Part 1A.
- (2) The necessary geographical nexus exists between the State and any of the offences against this Part if the offence is committed by a public official (within the meaning of the *Independent Commission Against Corruption Act 1988*) and involves public money of the State or property held by the public official for or on behalf of the State.

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Schedule 1 Principal amendments to Crimes Act 1900 No 40

[2] **Part 5**

Omit the Part. Insert instead:

Part 5 Forgery and related offences

Division 1 Preliminary

250 Gain or loss—meaning (cf sec 14.3 Model Code; sec 130.1Cth Code)

(1) In this Part:

gain means a gain in property (whether temporary or permanent) and includes keeping what one has, and *obtaining a gain* includes:

- (a) obtaining a gain for oneself or for another person, and
- (b) inducing a third person to do something that results in oneself or another person obtaining a gain.

loss means a loss in property (whether temporary or permanent) and includes not getting what one might otherwise get, and *causing* a loss means causing a loss to another.

(2) For the purposes of this Part, a gain or loss in property includes a gain or loss relating to the supply of services.

251 False document—meaning (cf sec 19.2 Model Code; sec 143.2 Cth Code)

(1) For the purposes of this Part, a document is *false* if, and only if, the document (or any part of the document) purports:

- (a) to have been made in the form in which it is made by a person who did not in fact make it in that form, or
- (b) to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form, or
- (c) to have been made in the terms in which it is made by a person who did not in fact make it in those terms, or
- (d) to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms, or
- (e) to have been altered in any respect by a person who did not in fact alter it in that respect, or
- (f) to have been altered in any respect on the authority of a person who did not in fact authorise its alteration in that respect, or

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- (g) to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered, or
 - (h) to have been made or altered by, or on the authority of, a person who did not in fact exist.
- (2) For the purposes of this Part, a person is to be treated as ***making a false document*** if the person alters a document so as to make it false within the meaning of this section (whether or not it is false in some other respect apart from that alteration).
 - (3) For the purpose of the application of this section, a document that purports to be a true copy of another document is to be treated as if it were the original document.

252 Inducing acceptance of false document (cf sec 19.1 Model Code; sec 144.1 Cth Code)

- (1) In this Part, a reference to inducing a person to accept a false document as genuine includes a reference to causing a machine to respond to the document as if it were a genuine document.
- (2) If it is necessary for the purposes of this Part to prove an intent to induce some person to accept a false document as genuine, it is not necessary to prove that the accused intended so to induce a particular person.

Division 2 Forgery

253 Forgery—making false document (cf sec 19.3 Model Code; sec 144.1 Cth Code)

A person who makes a false document with the intention that the person or another will use it:

- (a) to induce some person to accept it as genuine, and
- (b) by reason of so accepting it, to obtain a gain or cause a loss or to influence the exercise of a public duty,

is guilty of the offence of forgery.

Maximum penalty: Imprisonment for 10 years.

Division 3 Offences related to forgery

(cf sec 19.4 Model Code; sec 145.1 Cth Code)

254 Using false document

A person who uses a false document, knowing that it is false, with the intention of:

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- (a) inducing some person to accept it as genuine, and
 - (b) by reason of the person so accepting it, obtaining a gain or causing a loss or influencing the exercise of a public duty,
- is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

255 Possession of false document (cf sec 19.5 Model Code; sec 145.2 Cth Code)

A person who has in his or her possession a false document, knowing that it is false, with the intention that the person or another will use it:

- (a) to induce some person to accept it as genuine, and
 - (b) by reason of the person so accepting it, to obtain a gain or cause a loss or to influence the exercise of a public duty,
- is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

256 Making or possession of equipment etc for making false documents (cf sec 19.6 Model Code; sec 145.3 Cth Code)

- (1) A person who makes, or has in his or her possession, any equipment, material or other thing designed or adapted for the making of a false document:

- (a) knowing that it is so designed or adapted, and
- (b) with the intention that the person or another person will use the equipment, material or other thing to commit the offence of forgery,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (2) A person who, without reasonable excuse, makes or has in his or her possession any equipment, material or other thing designed or adapted for the making of a false document, knowing that it is so designed or adapted, is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

- (3) A person who possesses any equipment, material or other thing that is capable of being used to make a false document, with the intention that the person or another person will use the equipment, material or other thing to commit the offence of forgery, is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

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- (4) This section applies in respect of any equipment, material or other thing that is designed or adapted for the purpose of making a false document whether or not it is also designed or adapted for another purpose.
- (5) This section applies to a person who intends to commit an offence even if committing the offence concerned is impossible or the offence concerned is to be committed at a later time.
- (6) It is not an offence to attempt to commit an offence against this section.

257 False statement by officer of organisation (cf sec 176 Crimes Act; sec 19.8 Model Code)

- (1) An officer of an organisation who, with the intention of deceiving members or creditors of the organisation about its affairs, dishonestly publishes or concurs in publishing a document containing a statement or account that to his or her knowledge is or may be misleading, false or deceptive in a material particular is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- (2) In this section:
creditor of an organisation includes a person who has entered into a security for the benefit of the organisation.
officer of an organisation includes any member of the organisation who is concerned in its management and any person purporting to act as an officer of the organisation.
organisation means any body corporate or unincorporated association.

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Schedule 2 Consequential and other amendments to Crimes Act 1900 No 40

Schedule 2 Consequential and other amendments to Crimes Act 1900 No 40

[1] Part 4, heading

Omit the heading. Insert instead:

Part 4 Stealing and similar offences

[2] Part 4, Division 1, heading

Omit the heading.

[3] Part 4, Division 1, Subdivisions 1–6 and 16, headings

Omit “**Subdivision**” wherever occurring.

Insert instead “**Division**”.

[4] Section 158 Destruction, falsification of accounts etc by clerk or servant

Omit the section.

[5] Sections 164–178

Omit the sections (and the Subdivision in which they are contained).

[6] Section 178A

Omit the section (and the Subdivision in which it is contained).

[7] Section 178B

Omit the section (and the Subdivision in which it is contained).

[8] Section 178BA

Omit the section (and the Subdivision in which it is contained).

[9] Section 178BB

Omit the section (and the Subdivision in which it is contained).

[10] Section 178C

Omit the section (and the Subdivision in which it is contained).

[11] Sections 179–185

Omit the sections (and the Subdivision in which they are contained).

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Consequential and other amendments to Crimes Act 1900 No 40

Schedule 2

[12] Section 185A

Omit the section (and the Subdivision in which it is contained).

[13] Section 186

Omit the section (and the Subdivision in which it is contained).

[14] Section 193

Renumber the section as section 192A.

[15] Part 4, Division 1A, heading

Omit the heading. Insert instead:

Part 4AB Money laundering

[16] Part 4, Division 2, heading

Omit the heading. Insert instead:

Part 4AC Criminal destruction and damage

[17] Part 4AC (as re-numbered by this Schedule), Subdivision headings

Omit “Subdivision” wherever occurring.

Insert instead “Division”.

[18] Part 4AA Offences relating to transport services

Omit the heading to the Part. Insert instead:

Part 4AD Offences relating to transport services

[19] Section 527 Fraudulently appropriating or retaining property

Omit the section.

[20] Section 527A Obtaining money etc by wilfully false representation

Omit the section.

[21] Section 527B Framing a false invoice

Omit the section.

[22] Section 528 Advertising reward for return of stolen property

Omit the section.

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Schedule 2 Consequential and other amendments to Crimes Act 1900 No 40

[23] Section 545A Bogus advertisements

Omit the section.

[24] Section 547A False statement respecting births, deaths or marriages

Omit the section.

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Amendment of Criminal Procedure Act 1986 No 209

Schedule 3

Schedule 3 **Amendment of Criminal Procedure Act 1986 No 209**

[1] Section 309A

Insert after section 309:

309A Certificate may be issued to victim of identity crime

- (1) The Local Court may issue a certificate under this section if satisfied, on the balance of probabilities, that:
 - (a) an identity fraud offence has been committed, and
 - (b) the certificate may assist with problems the offence has caused in relation to the victim's personal or business affairs.
- (2) For the purposes of this section, the *victim* of an identity fraud offence is any person whose identification information is the subject of the offence.
- (3) A certificate under this section is to:
 - (a) identify the victim of the offence, and
 - (b) describe the manner in which identification information relating to the victim was used to commit the offence.
- (4) The certificate may contain such other information as the Local Court considers appropriate.
- (5) The certificate is not to identify the perpetrator or any alleged perpetrator of the offence.
- (6) The Local Court may issue a certificate under this section whether or not:
 - (a) the perpetrator of the offence is identifiable, or
 - (b) any criminal proceedings have been or can be taken against a person in respect of the offence, or are pending.
- (7) The Local Court may issue a certificate under this section on the court's own initiative or on application by the victim of the offence.
- (8) The certificate is not admissible in any criminal proceedings in relation to the offence.
- (9) The powers conferred by this section on the Local Court may also be exercised by the Supreme Court or the District Court during any proceedings before that Court for the alleged identity fraud offence concerned or on the disposal of any such proceedings.

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Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

(10) In this section:

identification information has the same meaning as it has in section 192H of the *Crimes Act 1900*.

identity fraud offence means an offence against section 192H of the *Crimes Act 1900*.

[2] Schedule 1 Indictable offences triable summarily

Insert after clause 10C of Part 3 of Table 1:

10D Fraud and related offences

An offence under Part 4AA of the *Crimes Act 1900* (other than under section 192H (2) or (3))

[3] Schedule 1 Indictable offences triable summarily

Insert after item 12A of Part 3 of Table 1:

12B Forgery and related offences

An offence under Division 2 or 3 of Part 5 of the *Crimes Act 1900* (other than under section 256 (2) or (3))

[4] Schedule 1 Indictable offences triable summarily

Insert after item 4 of Part 2 of Table 2:

4A Identity fraud

An offence under section 192H (2) or (3) of the *Crimes Act 1900*.

4AA Offences related to forgery

An offence under section 256 (2) or (3) of the *Crimes Act 1900*.