

Passed by both Houses



New South Wales

Crimes Amendment (Fraud, Identity and Forgery Offences) Bill 2009

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2009

Clerk of the Parliaments



New South Wales

Crimes Amendment (Fraud, Identity and Forgery Offences) Bill 2009

Act No , 2009

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

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

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

Schedule 1 Principal amendments to Crimes Act 1900 No 40

[1] Section 4B

Insert after section 4A:

4B Dishonesty

- (1) In this Act:

dishonest means dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people.

- (2) In a prosecution for an offence, dishonesty is a matter for the trier of fact.

[2] Section 10F

Insert after section 10E:

10F Special provisions with respect to geographical jurisdiction

- (1) This section applies for the purposes of, but without limiting, this Part.
- (2) The necessary geographical nexus exists between the State and any of the following offences 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:
- (a) larceny or any offence that includes larceny,
 - (b) fraud or any other offence under Part 4AA.

[3] Parts 4AA and 4AB

Insert after section 193 (renumbered as section 192A by Schedule 2):

Part 4AA Fraud

Division 1 Preliminary

192B Deception

- (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 Obtaining property belonging to another

- (1) For the purposes of this Part, a person *obtains property* if:
- (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.
- (2) A person does not commit an offence under this Part by obtaining or intending to obtain property belonging to another unless the person intends to permanently deprive the other of the property.
- (3) For the purposes of this Part, *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).

If property is subject to a trust, the persons to whom it belongs include any person having a right to enforce the trust.

- (4) 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.
- (5) Without limiting the generality of subsection (4), if:
- (a) a person has possession or control (lawfully or not) of property belonging to another, and

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- (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.

192D Obtaining financial advantage or causing financial disadvantage

- (1) In this Part, *obtain* a financial advantage includes:
 - (a) obtain a financial advantage for oneself or for another person, and
 - (b) induce a third person to do something that results in oneself or another person obtaining a financial advantage, and
 - (c) keep a financial advantage that one has, whether the financial advantage is permanent or temporary.
- (2) In this Part, *cause* a financial disadvantage means:
 - (a) cause a financial disadvantage to another person, or
 - (b) induce a third person to do something that results in another person suffering a financial disadvantage, whether the financial disadvantage is permanent or temporary.

Division 2 Fraud and related offences

192E Fraud

- (1) A person who, by any deception, dishonestly:
 - (a) obtains property belonging to another, or
 - (b) obtains any financial advantage or causes any financial disadvantage,is guilty of the offence of fraud.
Maximum penalty: Imprisonment for 10 years.
- (2) A person's obtaining of property belonging to another may be dishonest even if the person is willing to pay for the property.
- (3) A person may be convicted of the offence of fraud 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.

- (4) A conviction for the offence of fraud 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 the offence of fraud.

192F Intention to defraud by destroying or concealing accounting records

- (1) A person who dishonestly destroys or conceals any accounting record with the intention of:
- (a) obtaining property belonging to another, or
 - (b) obtaining a financial advantage or causing a financial disadvantage,
- is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (2) In this section, *destroy* includes obliterate.

192G Intention to defraud by false or misleading statement

A person who dishonestly makes or publishes, or concurs in making or publishing, any statement (whether or not in writing) that is false or misleading in a material particular with the intention of:

- (a) obtaining property belonging to another, or
 - (b) obtaining a financial advantage or causing a financial disadvantage,
- is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.

192H Intention to deceive members or creditors by false or misleading statement of officer of organisation

- (1) An officer of an organisation who, with the intention of deceiving members or creditors of the organisation about its affairs, dishonestly makes or publishes, or concurs in making or publishing, a statement (whether or not in writing) that to his or her knowledge is or may be false or misleading in a material particular is guilty of an offence.
Maximum penalty: Imprisonment for 7 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.

Part 4AB Identity offences

192I Definitions

In this Part:

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.

192J Dealing with identification information

A person who deals in identification information with the intention of committing, or of facilitating the commission of, an indictable offence is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

192K Possession of identification information

A person who possesses identification information with the intention of committing, or of facilitating the commission of, an indictable offence is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

192L 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.

192M Miscellaneous provisions

- (1) This Part does not apply to dealing in a person's own identification information.
- (2) It is not an offence to attempt to commit an offence against this Part.
- (3) This Part applies to a person who intends to commit an indictable offence even if committing the offence concerned is impossible or the offence concerned is to be committed at a later time.
- (4) Section 309A of the *Criminal Procedure Act 1986* enables a victim of an offence against this Part 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.

[4] Part 5

Omit the Part (except Division 3 which becomes Part 5A by the operation of Schedule 2 [22]).

Insert instead:

Part 5 Forgery

Division 1 Preliminary

250 False document—meaning

- (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
 - (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.

251 Inducing acceptance of false document

- (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.

252 Interpretative provisions relating to obtaining property, financial advantage and financial disadvantage

The following provisions of Part 4AA (Fraud) also apply to this Part:

- (a) section 192C (Obtaining property belonging to another),
- (b) section 192D (Obtaining financial advantage or causing financial disadvantage).

Division 2 Forgery

253 Forgery—making false document

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) because of its being accepted as genuine:
 - (i) to obtain any property belonging to another, or
 - (ii) to obtain any financial advantage or cause any financial disadvantage, or
 - (iii) 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

254 Using false document

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

- (a) inducing some person to accept it as genuine, and
- (b) because of its being accepted as genuine:
 - (i) obtaining any property belonging to another, or

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- (ii) obtaining any financial advantage or causing any financial disadvantage, or
 - (iii) influencing the exercise of a public duty,
- is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

255 Possession of false document

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) because of its being accepted as genuine:
 - (i) to obtain any property belonging to another, or
 - (ii) to obtain any financial advantage or cause any financial disadvantage, or
 - (iii) 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

- (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.

- (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.

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

- [1] **Section 61J (3)**
Omit “Subdivision 4 of Division 1”. Insert instead “Division 4”.
- [2] **Part 4, heading**
Omit the heading. Insert instead:
- Part 4 Stealing and similar offences**
- [3] **Part 4, Division 1, heading**
Omit the heading.
- [4] **Part 4, Division 1, Subdivisions 1–6 and 16, headings**
Omit “**Subdivision**” wherever occurring.
Insert instead “**Division**”.
- [5] **Sections 154E, 188 (2), 203A and 203D**
Omit “Subdivision” wherever occurring.
Insert instead “Division”.
- [6] **Section 158 Destruction, falsification of accounts etc by clerk or servant**
Omit the section.
- [7] **Sections 164–178**
Omit the sections (and the Subdivision in which they are contained).
- [8] **Section 178A**
Omit the section (and the Subdivision in which it is contained).
- [9] **Section 178B**
Omit the section (and the Subdivision in which it is contained).
- [10] **Section 178BA**
Omit the section (and the Subdivision in which it is contained).
- [11] **Section 178BB**
Omit the section (and the Subdivision in which it is contained).

[12] Section 178C

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

[13] Sections 179–185

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

[14] Section 185A

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

[15] Section 186

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

[16] Section 193

Renumber the section as section 192A.

[17] Part 4, Division 1A, heading

Omit the heading. Insert instead:

Part 4AC Money laundering

[18] Sections 193A, 193F, 193G and 194

Omit “Division” wherever occurring.

Insert instead “Part”.

[19] Part 4, Division 2, heading

Omit the heading. Insert instead:

Part 4AD Criminal destruction and damage

[20] Part 4AD (as renumbered by this Schedule), Subdivision headings

Omit “Subdivision” wherever occurring.

Insert instead “Division”.

[21] Part 4AA Offences relating to transport services

Omit the heading to the Part. Insert instead:

Part 4AE Offences relating to transport services

[22] Part 5, Division 3 False and misleading information

Omit the heading. Insert instead:

Part 5A False and misleading information

[23] Section 318

Omit section 318 (4). Insert instead:

(4) Section 250 applies to the interpretation of this section.

[24] Section 527 Fraudulently appropriating or retaining property

Omit the section.

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

Omit the section.

[26] Section 527B Framing a false invoice

Omit the section.

[27] Section 527C (3)

Omit "Subdivision 5A of Division 1". Insert instead "Division 5A".

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

Omit the section.

[29] Section 545A Bogus advertisements

Omit the section.

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

Omit the section.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

[1] Section 273 Jurisdiction of Magistrates in offences arising under Part 4AD of Crimes Act 1900

Omit “Division 2 of Part 4”. Insert instead “Part 4AD”.

[2] 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 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 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 offence concerned or on the disposal of any such proceedings.

(10) In this section:
identification information has the same meaning as it has in Part 4AB of the *Crimes Act 1900*.
identity offence means an offence against Part 4AB of the *Crimes Act 1900*.

[3] Schedule 1 Indictable offences triable summarily

Insert after item 4 of Part 2 of Table 1:

4A Fraud and related offences

An offence under Part 4AA of the *Crimes Act 1900*.

[4] Schedule 1

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

10D Identity offences

An offence under Part 4AB of the *Crimes Act 1900* (other than under section 192L).

[5] Schedule 1

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

12B Forgery and related offences

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

[6] Schedule 1

Insert after item 4 of Part 2 of Table 2:

4A Identity offences

An offence under section 192L of the *Crimes Act 1900*.

4AA Offences related to forgery

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

Schedule 4 Consequential amendment of other Acts

4.1 Confiscation of Proceeds of Crime Act 1989 No 90

Sections 69 (3) and 72

Omit “Division 1A of Part 4”. Insert instead “Part 4AC”.

4.2 Crimes (Forensic Procedures) Act 2000 No 59

[1] Section 76A Excluded volunteers

Omit “Subdivision 2 of Division 1” from paragraphs (a) and (b) of the definition of *excluded volunteer* wherever occurring.

Insert instead “Division 2”.

[2] Sections 76A (paragraphs (c) and (d) of definition of “excluded volunteer”) and 87A

Omit “Part 4” wherever occurring.

Insert instead “Parts 4, 4AA, 4AC or 4AD”.

4.3 Motor Dealers Act 1974 No 52

Sections 12 (2) (i) and (4) (k) and 20D (1) (d1)

Omit “Subdivision 5A of Division 1” wherever occurring.

Insert instead “Division 5A”.

4.4 Motor Vehicle Repairs Act 1980 No 71

Sections 18 (1) (j) and (3) (k) and 42 (1) (f)

Omit “Subdivision 5A of Division 1” wherever occurring.

Insert instead “Division 5A”.