

Legislative Council—No 111

As introduced and read a first time, 6 May 2021

South Australia

Statutes Amendment (Identity Theft) Bill 2021

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*, the *Criminal Procedure Act 1921*, the *Sentencing Act 2017* and the *Youth Court Act 1993*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

- 4 Amendment of section 144A—Interpretation
- 5 Amendment of section 144B—False identity etc
- 6 Amendment of section 144C—Misuse of personal identification information
- 7 Amendment of section 144D—Prohibited material
- 8 Insertion of section 144DA
144DA Possession of personal identification information
- 9 Amendment of section 144F—Application of Part

Part 3—Amendment of *Criminal Procedure Act 1921*

- 10 Insertion of Part 4 Division 6
Division 6—Identity theft certificates
84 Certificate for identity theft victims

Part 4—Amendment of *Sentencing Act 2017*

- 11 Amendment of section 125—Certificate for identity theft victims

Part 5—Amendment of *Youth Court Act 1993*

- 12 Amendment of section 7—Jurisdiction
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Identity Theft) Act 2021*.

5 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of section 144A—Interpretation

- (1) Section 144A—before the definition of *criminal purpose* insert:

close relative—a person is a close relative of another if—

- (a) they are spouses or domestic partners; or
(b) one is (whether by blood or marriage) a grandparent, grandchild, parent, child, brother or sister of the other;

- (2) Section 144A—after the definition of *false identity* insert:

on-line gambling product or service means any product or service that enables people to place bets or otherwise engage in a gambling activity by telephone, internet or other electronic means;

- (3) Section 144A, definition of *personal identification information*, (a)(i)—after "address" insert:

or other contact details

- (4) Section 144A, definition of *personal identification information*, (a)(vi)—delete subparagraph (vi) and substitute:

(vi) each of the following:

- (A) the person's credit or debit card (whether in physical or digital form);
(B) the number and card verification code on such a card;
(C) any data stored or encrypted on such a card;

- (5) Section 144A, definition of *personal identification information*, (a)(viii)—after "identification" insert:

(including, to avoid doubt, a personal identification number (PIN) or other password or passcode)

- (6) Section 144A—after the definition of *prohibited material* insert:

public identification information means a person's name, address or other contact details, date or place of birth, marital status and relatives;

- (7) Section 144A, definition of *serious criminal offence*—delete the definition

5—Amendment of section 144B—False identity etc

Section 144B(3)—delete "serious" wherever occurring

6—Amendment of section 144C—Misuse of personal identification information

Section 144C(1)—delete "serious" wherever occurring

7—Amendment of section 144D—Prohibited material

Section 144D(1), (2) and (3), penalty provisions—delete "3 years" wherever occurring and substitute in each case:

5 years

8—Insertion of section 144DA

After section 144D insert:

144DA—Possession of personal identification information

(1) A person who, without reasonable excuse, has possession of personal identification information of another person (the *victim*) is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply if—

- (a) the victim is a body corporate; or
- (b) the personal identification information consists only of public identification information.

(3) If, in proceedings for an offence against subsection (1), the defendant establishes that—

- (a) in the ordinary course of a lawful occupation or activity undertaken by the defendant, the defendant has possession of personal information of other people generally or of a class of people to which the victim belongs; or
- (b) the defendant and the victim are close relatives; or
- (c) the defendant holds a power of attorney for the victim or is appointed under the *Guardianship and Administration Act 1993* as a guardian or administrator in relation to the victim,

then, despite section 5B, the prosecution will be required to prove that the defendant had possession of the relevant material without reasonable excuse.

9—Amendment of section 144F—Application of Part

(1) Section 144F(a)—Delete "This Part" and substitute:

Subject to subsection (2), this Part

(2) Section 144F—after its present contents (now to be designated as subsection (1)) insert:

- (2) This Part does however apply to misrepresentation by a person under the age of 18 years for the purpose of obtaining access to—
 - (a) an on-line gambling product or service; or
 - (b) a publication, film or computer game,

that is not lawfully allowed to be made available or supplied to
persons under the age of 18.

Part 3—Amendment of *Criminal Procedure Act 1921*

10—Insertion of Part 4 Division 6

5 After section 83 insert:

Division 6—Identity theft certificates

84—Certificate for identity theft victims

- 10 (1) The Magistrates Court may, on application by a person, issue them
with a certificate under subsection (2) if satisfied, on the balance of
probabilities, that the person is an identity theft victim.
- (2) A certificate issued to a person is to—
- (a) identify the person; and
- (b) give details of the manner in which the person's personal
15 identification information was used to commit the offence
(whether or not any person has been charged with, or found
guilty of, the offence); and
- (c) include any other matters considered by the Court to be
relevant.
- (3) The certificate—
- 20 (a) is not admissible in any criminal proceedings in relation to
the offence; and
- (b) may be varied or revoked by the Court on application by the
person to whom it was issued, a police officer or a person
25 who satisfies the Court that they are adversely affected by
the certificate.
- (4) In this section—
- 30 *identity theft victim* means a person whose identity has been
assumed, or personal identification information has been used,
without the person's consent, in connection with the commission of
an offence;

personal identification information has the same meaning as in
Part 5A of the *Criminal Law Consolidation Act 1935*.

Part 4—Amendment of *Sentencing Act 2017*

11—Amendment of section 125—Certificate for identity theft victims

- 35 (1) Section 125(1)—delete "under subsection (2)" and substitute:
- of a kind that may be issued under Part 4 Division 6 of the *Criminal
Procedure Act 1921*

(2) Section 125(2)—delete subsection (2)

Part 5—Amendment of *Youth Court Act 1993*

12—Amendment of section 7—Jurisdiction

Section 7—after paragraph (c) insert:

- 5 (ca) has the same jurisdiction as the Magistrates Court to issue an identity theft certificate under Part 4 Division 6 of the *Criminal Procedure Act 1921* if the applicant for the certificate is a child or youth and has power under that Act to vary or revoke such a certificate; and