

Legislative Council—No 100

As introduced and read a first time, 15 June 2023

South Australia

Statutes Amendment (Identity Theft) Bill 2023

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*.

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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 2023*.

5 2—Commencement

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

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

3—Amendment of section 144A—Interpretation

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

10 *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, definition of *personal identification information*, (a)(i)—after "address" insert:

or other contact details

- (3) 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;

- (4) 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)

- (5) 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;

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

4—Amendment of section 144B—False identity etc

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

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

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

6—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

7—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—
- 5 (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
- 10 (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; or
- 15 (d) the personal identification information only related to 1 person and was readily publicly available,

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

Part 3—Amendment of *Criminal Procedure Act 1921*

8—Insertion of Part 4 Division 6

After section 83 insert:

Division 6—Identity theft certificates

84—Certificate for identity theft victims

- 25 (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
- 30 (b) give details of the manner in which the person's personal 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.
- 35 (3) The certificate—
- (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 who satisfies the Court that they are adversely affected by the certificate.

5 (4) In this section—

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;

10 *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*

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

(1) Section 125(1)—delete "under subsection (2)" and substitute:

15 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*

10—Amendment of section 7—Jurisdiction

20 Section 7—after paragraph (c) insert:

(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