

South Australia

Criminal Law Consolidation (Identity Theft) Amendment Act 2003

An Act to amend the *Criminal Law Consolidation Act 1935* and to make a related amendment to the *Criminal Law (Sentencing) Act 1988*.

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Part 1—Preliminary

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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 *Criminal Law Consolidation (Identity Theft) Amendment Act 2003*.

2—Commencement

This Act will come 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—Insertion of Part 5A

After Part 5 insert:

Part 5A—Identity theft

144A—Interpretation

In this Part—

criminal purpose means the purpose of committing, or facilitating the commission of, an offence;

digital signature means encrypted electronic or computer data intended for the exclusive use of a particular person as a means of identifying himself or herself as the sender of an electronic communication;

electronic communication means a communication transmitted in the form of electronic or computer data;

false identity—a person assumes a false identity if the person pretends to be, or passes himself or herself off as, some other person;

The other person may be—

- (a) living or dead;
- (b) real or fictional;
- (c) natural or corporate.

personal identification information—a person's personal identification information is information used to identify the person, and includes—

- (a) in the case of a natural person—
 - (i) information about the person such as his or her name, address, date or place of birth, marital status, relatives and so on;
 - (ii) the person's driver's licence or driver's licence number;
 - (iii) the person's passport or passport number;
 - (iv) biometric data relating to the person;

- (v) the person's voice print;
 - (vi) the person's credit or debit card, its number, and data stored or encrypted on it;
 - (vii) any means commonly used by the person to identify himself or herself (including a digital signature);
 - (viii) a series of numbers or letters (or a combination of both) intended for use as a means of personal identification;
- (b) in the case of a body corporate—
- (i) its name;
 - (ii) its ABN;
 - (iii) the number of any bank account established in the body corporate's name or of any credit card issued to the body corporate;

prohibited material means anything (including personal identification information) that enables a person to assume a false identity or to exercise a right of ownership that belongs to someone else to funds, credit, information or any other financial or non-financial benefit;

serious criminal offence means—

- (a) an indictable offence; or
- (b) an offence prescribed by regulation for the purposes of this definition;

voice print means computer data recording the unique characteristics of a person's voice.

144B—False identity etc

- (1) A person who—
 - (a) assumes a false identity; or
 - (b) falsely pretends—
 - (i) to have particular qualifications; or
 - (ii) to have, or to be entitled to act in, a particular capacity,makes a false pretence to which this section applies.
- (2) A person who assumes a false identity makes a false pretence to which this section applies even though the person acts with the consent of the person whose identity is falsely assumed.

- (3) A person who makes a false pretence to which this section applies intending, by doing so, to commit, or facilitate the commission of, a serious criminal offence is guilty of an offence and liable to the penalty appropriate to an attempt to commit the serious criminal offence.

144C—Misuse of personal identification information

- (1) A person who makes use of another person's personal identification information intending, by doing so, to commit, or facilitate the commission of, a serious criminal offence, is guilty of an offence and liable to the penalty appropriate to an attempt to commit the serious criminal offence.
- (2) This section applies irrespective of whether the person whose personal identification information is used—
 - (a) is living or dead; or
 - (b) consents to the use of the personal identification information.

144D—Prohibited material

- (1) A person who—
 - (a) produces prohibited material; or
 - (b) has possession of prohibited material,intending to use the material, or to enable another person to use the material, for a criminal purpose is guilty of an offence.
Maximum penalty: Imprisonment for 3 years.
- (2) A person who sells (or offers for sale) or gives (or offers to give) prohibited material to another person, knowing that the other person is likely to use the material for a criminal purpose is guilty of an offence.
Maximum penalty: Imprisonment for 3 years.
- (3) A person who is in possession of equipment for making prohibited material intending to use it to commit an offence against this section is guilty of an offence.
Maximum penalty: Imprisonment for 3 years.

144E—Attempt offence excluded

A person cannot be convicted of an attempt to commit an offence against this Part.

144F—Application of Part

This Part does not apply—

- (a) to misrepresentation by a person under the age of 18 years for the purpose of—

- (i) obtaining alcohol, tobacco or any other product not lawfully available to persons under the age of 18; or
 - (ii) gaining entry to premises to which access is not ordinarily allowed to persons under the age of 18; or
- (b) to any thing done by a person under that age to facilitate such a misrepresentation.

Schedule 1—Related amendment

Part 1—Preliminary

1—Amendment provisions

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

Part 2—Amendment of *Criminal Law (Sentencing) Act 1988*

2—Insertion of section 54

After section 53 insert:

54—Certificate for victims of identity theft

- (1) A court that finds a person guilty of an offence involving—
- (a) the assumption of another person's identity; or
 - (b) the use of another person's personal identification information,
- may, on application by a victim of the offence, issue a certificate under subsection (2).
- (2) The certificate is to give details of—
- (a) the offence; and
 - (b) the name of the victim; and
 - (c) any other matters considered by the court to be relevant.
- (3) In this section—

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

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 the offence.