

## Second Reading

**The Hon. JOHN HATZISTERGOS** (Attorney General, Minister for Industrial Relations, Vice President of the Executive Council) [6.30 p.m.]: I move:

That this bill be now read a second time.

The Crimes Amendment (Fraud, Identity and Forgery Offences) Bill 2009 amends the Crimes Act 1900 to introduce three new parts. The first updates the crime of fraud and increases the maximum penalty for this crime to 10 years, doubled from 5 in the current law. The second introduces new offences arising from identity crime, the maximum penalty for which will also be 10 years. The third updates the law relating to forgery, and also sets the maximum penalty at 10 years. This bill is the product of significant research and consultation and draws on three reports produced by the Model Criminal Law Officers Committee of the Standing Committee of Attorneys General on Theft and Fraud, Credit Card Skimming, and Identity Crime. It also draws on the Commonwealth Criminal Code to the extent that it picks up on those reports.

The bill does not adopt all of the provisions of the reports as incorporated in the Model Criminal Code as some of the thinking behind the model bill has progressed, but it does bring New South Wales closer to the national approach. New South Wales has also had the benefit of the experience of its own practitioners who have provided significant assistance in this project through submissions and consultation. More than 30 fraud provisions are being replaced with four new provisions, and 25 forgery provisions are being replaced by six new provisions. These new broad offences will cover all the sorts of conduct formerly dealt with under numerous very specific offences. It is a significant rewrite of this part of the Crimes Act.

One example of the old offences we are repealing is forging or uttering any East India bond, an offence from the eighteenth century when the East India Company issued bonds to finance its activity. Not surprisingly, no person has been convicted under this section for many years. The bill removes this and many other out-of-date provisions, and replaces them with simple and modern offences that can keep pace with modern criminal conduct. Fraud, which is the dishonest deception by one person of another to obtain property or financial gain or to cause a financial disadvantage, is an area of crime that has exploited the opportunities opened up by technology, and that makes it hard to police. It covers the creation and cashing of false cheques, pyramid schemes, inducements to invest based on a misrepresented scheme, the creation and sale of counterfeit items such as artworks or designer clothing, or failing to pay for items, such as petrol.

The new fraud offences I am introducing are technologically neutral, and will ensure that criminal conduct now and well into the future can be caught. The bill also doubles the maximum penalty for fraud from five to ten years, demonstrating how seriously we take the issue. Identity fraud, involving the theft then misuse of personal identification information, is a growing problem, and one to which we are all potentially exposed. A major enabler of this sort of fraud is the trade in identification information. People acquire it in various ways—skimming machines or fake emails, for example—and then they sell it online to other people who use it to commit a crime, such as fraud, or the creation of a new identity to conceal involvement in other serious crimes, drug offences or money laundering.

It will now be a very serious crime, punishable by up to 10 years imprisonment, if a person deals in identification information this will include using it, making it or selling it. It is a growth crime, costing Australians millions of dollars a year, and we are determined to give police the power they need to investigate and prosecute it. Forgery is another area of crime characterised by rapid change. There are all sorts of documents people now create in order to obtain property or some financial advantage. This bill repeals the specific and outdated offences, and puts six broad offences in their place. These offences can cover machinery especially made to counterfeit money, for example, and standard office equipment such as scanners used to make false identification. These are important and timely reforms that mean these parts of the Crimes Act will support law enforcement well into the future, and I am very pleased to introduce them. I will now briefly outline the more significant provisions of the bill.

Schedule 1 [3] inserts a new part 4AA into the Crimes Act and contains the new fraud provisions. The principal fraud offence is contained in clause 192E which makes it an offence for a person by any deception to dishonestly obtain another's property, obtain any financial advantage or cause any financial disadvantage. This offence carries a maximum penalty of 10 years imprisonment. This one provision clearly covers most fraud cases, and ensures that only people that have been deceptive and dishonest will be prosecuted. The Model Criminal Code definition of dishonesty has been adopted, so that the mental element of dishonesty means dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to those standards. This definition will apply to offences in the Crimes Act that involve dishonesty, and was recommended by the Model Criminal Law Officers Committee. It was supported by the High Court in the case of *Peters v the Queen* and has been adopted in the Commonwealth Crimes Act. Its adoption will particularly assist juries in hearings containing charges for both Commonwealth and New South Wales offences.

The part also contains a number of definitions for the purposes of fraud and forgery, and the concepts of "obtain property", "obtain financial advantage" and "cause financial disadvantage" are clearly explained. "Deception" is also defined in this part and includes a deception exercised on a machine such as a computer or automatic teller machine. Three further offences are contained in proposed part 4AA. They include an offence for a person to dishonestly destroy, which includes obliterate, or conceal any accounting record with the intention of obtaining another's property, obtaining a financial advantage or causing a financial disadvantage. This offence carries a maximum penalty of five years imprisonment. This offence will ensure that accounting records cannot be deleted or concealed on a computer in order to avoid prosecution.

Clause 192G of the bill is a modernised version of section 178BB of the Crimes Act. This provision makes it an offence for a person to dishonestly make, publish or concur in making or publishing any statement that is false or misleading in a material way, with the intention of obtaining another's property, or obtaining a financial advantage or causing a financial disadvantage. This offence carries a maximum penalty of five years imprisonment. Clause 192H applies to officers of organisations who make false or misleading statements with the intention of deceiving the members or creditors of that organisation about its affairs. This offence carries a maximum penalty of seven years imprisonment, and the higher penalty is justified by the position of trust and responsibility that the offender is in.

Schedule 1 [3] inserts the new identity offences in a new part 4AB. Clause 192J makes it an offence for a person to deal in identification information with the intention of committing, or facilitating the commission of, an indictable offence. This offence will carry a maximum penalty of 10 years imprisonment. "Deal" is defined broadly in the bill and includes make, supply or use. A person may also commit the offence of possession of identification information with the intention of committing or facilitating the commission of an indictable offence. This offence will carry a maximum penalty of seven years imprisonment. It will also be an offence to possess equipment to make identification information punishable by imprisonment of up to three years.

Schedule 3 to the bill also amends the Criminal Procedure Act, to allow a victim of identity crime to obtain a certificate from the Local Court that identifies the person as a victim of identity crime, and describes the manner in which identification information relating to the victim was used to commit the offence. The certificate should assist victims of identity crime in repairing the damage done to their financial affairs and personal details.

Schedule 1 [4] to the bill inserts the six new simplified forgery offences. Provision is made in the part for what is a false document and ensures that a reference to inducing in this part includes causing a machine to respond to a document as if it were a genuine document. The forgery part also picks up on the language used in the fraud part, and shares the concepts of obtain property, obtain financial advantage and cause financial disadvantage.

Clause 253 makes it an offence to make a false document with the intention that it will be used to induce another person to accept it as genuine to obtain another's property, obtain a financial advantage or cause a financial disadvantage, or influence the exercise of a public duty. This offence carries a maximum penalty of 10 years imprisonment. The bill also makes it an offence for a person to knowingly use a false document with the intention to induce another person to accept it as genuine to obtain property, obtain a financial advantage or cause a financial disadvantage, or influence the exercise of a public duty. This offence carries a maximum penalty of 10 years imprisonment.

The third major forgery offence is of possession of a false document with the intention of inducing someone to accept it as genuine to obtain another's property, obtain a financial advantage or cause a financial disadvantage, or influence the exercise of a public duty. This offence also carries a maximum penalty of 10 years. Provisions criminalising the making or possessing of equipment have been added to in order to keep up with technological advances. The old provisions have been updated in modern language, but it remains an offence to knowingly make or possess especially adapted equipment with intent to use it to commit forgery. This offence is punishable by imprisonment for up to 10 years.

In addition, however, the bill makes it an offence simply to possess especially adapted equipment without reasonable excuse. It is also an offence for a person to possess ordinary, everyday equipment which has not been especially adapted, if it is held with the intention of committing a forgery offence. Both these offences carry a penalty of three years. This bill addresses the serious and growing problem of identity crime in New South Wales. It also modernises and simplifies the existing fraud and forgery offences in the Crimes Act and deletes the outdated and redundant provisions, replacing them with provisions that conceptually fit in a modern Crimes Act. The bill also adopts a number of the provisions and more broadly the structure of the national Model Criminal Code. It will bring New South Wales more in step with the national approach to fraud, forgery and identity crime, and will give law enforcement the tools required in a modern age to actively combat these crimes. I commend the bill to the House.