

First print



New South Wales

Crimes Amendment (Computer Offences) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to enact modern computer offences under the *Crimes Act 1900*.

The new offences follow those contained in the Model Criminal Code recommended by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General (Chapter 4 Damage and computer offences, Report of the Committee issued February 2001).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendment to the *Criminal Procedure Act 1986* set out in Schedule 2.

Schedule 1 contains the amendments to the *Crimes Act 1900*.

Part 6 of the Act at present contains the following computer offences:

Section	Offence	Max penalty
310	Damaging data in computer	10 years and/or 1,000 penalty units
309 (1)	Unlawful access to data in computer	6 months and/or 50 penalty units
309 (2)	Unlawful access to data in computer—intent to defraud/dishonestly obtain benefit or cause loss/injury	2 years and/or 500 penalty units
309 (3)	Unlawful access to data in computer—knowledge data is confidential	2 years and/or 500 penalty units
309 (4)	Continue to examine data in computer—ought reasonably to know data confidential	2 years and/or 500 penalty units

Those computer offences are to be replaced by the following computer offences:

Section	Offence	Max penalty
308C	Cause unauthorised computer function with intention to commit serious offence (comprising unauthorised access to data, unauthorised modification of data or unauthorised impairment of electronic communication)	The maximum penalty applicable for commission of serious indictable offence
308D	Unauthorised modification of data with intent to cause impairment	10 years
308E	Unauthorised impairment of electronic communication to or from computer	10 years
308F	Possession of data with intent to commit computer offence	3 years
308G	Producing, supplying or obtaining data with intent to commit computer offence	3 years
308H	Unauthorised access to or modification of restricted data in computer (summary offence)	2 years
308I	Unauthorised impairment of data held in computer disk, credit card or other device (summary offence)	2 years

Under sections 15 and 16 of the *Crimes (Sentencing Procedure) Act 1999*, the court may impose a fine for any such offence instead of or in addition to a sentence of imprisonment, namely 1,000 penalty units (currently \$110,000) or, in the case of a corporation, 2,000 penalty units (currently \$220,000).

An explanation of the new offences and the policy considerations concerned is contained in the report on Chapter 4 (Damage and computer offences) of the Model Criminal Code Officers Committee.

Schedule 2 contains an amendment to the *Criminal Procedure Act 1986* that is consequential on the amendments contained in Schedule 1. The amendment provides that all of the new computer offences that are indictable and carry a maximum penalty of 10 years imprisonment or less are to be disposed of summarily (with a maximum penalty of 2 years imprisonment) unless the prosecuting authority or the accused otherwise elects.



New South Wales

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New South Wales

Crimes Amendment (Computer Offences) Bill 2001

No. , 2001

A Bill for

An Act to amend the *Crimes Act 1900* and the *Criminal Procedure Act 1986* with respect to computer offences.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Amendment (Computer Offences) Act 2001</i> .	3
2 Commencement	4
This Act commences on a day to be appointed by proclamation.	5
3 Amendment of Crimes Act 1900 No 40	6
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	7
4 Amendment of Criminal Procedure Act 1986 No 209	8
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 2.	9

Schedule 1	Amendment of Crimes Act 1900	1
	(Section 3)	2
[1] Part 6		3
	Omit the Part. Insert instead:	4
	Part 6 Computer offences	5
	308 General definitions	6
	In this Part:	7
	<i>computer offence</i> means:	8
	(a) an offence against this Part, or	9
	(b) conduct in another jurisdiction that is an offence in that jurisdiction and that would constitute an offence against this Part if the conduct occurred in this jurisdiction.	10 11 12
	<i>data</i> includes:	13
	(a) information in any form, or	14
	(b) any program (or part of a program).	15
	<i>data held in a computer</i> includes:	16
	(a) data entered or copied into the computer, or	17
	(b) data held in any removable data storage device for the time being in the computer, or	18 19
	(c) data held in a data storage device on a computer network of which the computer forms part.	20 21
	<i>data storage device</i> means any thing (for example a disk or file server) containing or designed to contain data for use by a computer.	22 23 24
	<i>electronic communication</i> means a communication of information in any form by means of guided or unguided electromagnetic energy.	25 26 27

308A	Meaning of access to data, modification of data and impairment of electronic communication	1
		2
(1)	In this Part, <i>access</i> to data held in a computer means:	3
(a)	the display of the data by the computer or any other output of the data from the computer, or	4
		5
(b)	the copying or moving of the data to any other place in the computer or to a data storage device, or	6
		7
(c)	in the case of a program—the execution of the program.	8
(2)	In this Part, <i>modification</i> of data held in a computer means:	9
(a)	the alteration or removal of the data, or	10
(b)	an addition to the data.	11
(3)	In this Part, <i>impairment</i> of electronic communication to or from a computer includes:	12
		13
(a)	the prevention of any such communication, or	14
(b)	the impairment of any such communication on an electronic link or network used by the computer,	15
		16
	but does not include a mere interception of any such communication.	17
		18
(4)	A reference in this Part to any such access, modification or impairment is limited to access, modification or impairment caused (whether directly or indirectly) by the execution of a function of a computer.	19
		20
		21
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308B	Meaning of unauthorised access, modification or impairment	23
(1)	For the purposes of this Part, access to or modification of data, or impairment of electronic communication, by a person is <i>unauthorised</i> if the person is not entitled to cause that access, modification or impairment.	24
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(2)	Any such access, modification or impairment is not unauthorised merely because the person has an ulterior purpose for that action.	28
		29
		30
(3)	For the purposes of an offence under this Part, a person causes any such unauthorised access, modification or impairment if the person's conduct substantially contributes to the unauthorised access, modification or impairment.	31
		32
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308C	Unauthorised access, modification or impairment with intent to commit serious indictable offence	1
		2
(1)	A person who causes any unauthorised computer function:	3
(a)	knowing it is unauthorised, and	4
(b)	with the intention of committing a serious indictable offence, or facilitating the commission of a serious indictable offence (whether by the person or by another person),	5 6 7 8
	is guilty of an offence.	9
	Maximum penalty: The maximum penalty applicable if the person had committed, or facilitated the commission of, the serious indictable offence in this jurisdiction.	10 11 12
(2)	For the purposes of this section, an <i>unauthorised computer function</i> is:	13 14
(a)	any unauthorised access to data held in any computer, or	15 16
(b)	any unauthorised modification of data held in any computer, or	17 18
(c)	any unauthorised impairment of electronic communication to or from any computer.	19 20
(3)	For the purposes of this section, a <i>serious indictable offence</i> includes an offence in any other jurisdiction that would be a serious indictable offence if committed in this jurisdiction.	21 22 23
(4)	A person may be found guilty of an offence against this section:	24 25
(a)	even if committing the serious indictable offence concerned is impossible, or	26 27
(b)	whether the serious indictable offence is to be committed at the time of the unauthorised conduct or at a later time.	28 29 30
(5)	It is not an offence to attempt to commit an offence against this section.	31 32

308D	Unauthorised modification of data with intent to cause impairment	1
		2
(1)	A person who:	3
(a)	causes any unauthorised modification of data held in a computer, and	4
		5
(b)	knows that the modification is unauthorised, and	6
(c)	intends by the modification to impair access to, or to impair the reliability, security or operation of, any data held in a computer, or who is reckless as to any such impairment,	7
		8
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	is guilty of an offence.	11
	Maximum penalty: Imprisonment for 10 years.	12
(2)	A conviction for an offence against this section is an alternative verdict to a charge for:	13
		14
(a)	an offence against section 195 (Maliciously destroying or damaging property), or	15
		16
(b)	an offence against section 308E (Unauthorised impairment of electronic communication).	17
		18
308E	Unauthorised impairment of electronic communication	19
(1)	A person who:	20
(a)	causes any unauthorised impairment of electronic communication to or from a computer, and	21
		22
(b)	knows that the impairment is unauthorised, and	23
(c)	intends to impair electronic communication to or from the computer, or who is reckless as to any such impairment,	24
		25
		26
	is guilty of an offence.	27
	Maximum penalty: Imprisonment for 10 years.	28
(2)	A conviction for an offence against this section is an alternative verdict to a charge for:	29
		30
(a)	an offence against section 195 (Maliciously destroying or damaging property), or	31
		32
(b)	an offence against section 308D (Unauthorised modification of data with intent to cause impairment).	33
		34

308F	Possession of data with intent to commit computer offence	1
(1)	A person who is in possession or control of data:	2
(a)	with the intention of committing a computer offence, or	3
(b)	with the intention of facilitating the commission of a computer offence (whether by the person or by another person),	4 5 6
	is guilty of an offence.	7
	Maximum penalty: Imprisonment for 3 years.	8
(2)	For the purposes of this section, <i>possession or control of data</i> includes:	9 10
(a)	possession of a computer or data storage device holding or containing the data or of a document in which the data is recorded, and	11 12 13
(b)	control of data held in a computer that is in the possession of another person (whether the computer is in this jurisdiction or outside this jurisdiction).	14 15 16
(3)	A person may be found guilty of an offence against this section even if committing the computer offence concerned is impossible.	17 18 19
(4)	It is not an offence to attempt to commit an offence against this section.	20 21
308G	Producing, supplying or obtaining data with intent to commit computer offence	22 23
(1)	A person who produces, supplies or obtains data:	24
(a)	with the intention of committing a computer offence, or	25
(b)	with the intention of facilitating the commission of a computer offence (whether by the person or by another person),	26 27 28
	is guilty of an offence.	29
	Maximum penalty: Imprisonment for 3 years.	30
(2)	For the purposes of this section, <i>produce, supply or obtain data</i> includes:	31 32
(a)	produce, supply or obtain data held or contained in a computer or data storage device, or	33 34

	(b) produce, supply or obtain a document in which the data is recorded.	1 2
	(3) A person may be found guilty of an offence against this section even if committing the computer offence concerned is impossible.	3 4 5
308H	Unauthorised access to or modification of restricted data held in computer (summary offence)	6 7
	(1) A person:	8
	(a) who causes any unauthorised access to or modification of restricted data held in a computer, and	9 10
	(b) who knows that the access or modification is unauthorised, and	11 12
	(c) who intends to cause that access or modification, is guilty of an offence.	13 14
	Maximum penalty: Imprisonment for 2 years.	15
	(2) An offence against this section is a summary offence.	16
	(3) In this section:	17
	<i>restricted data</i> means data held in a computer to which access is restricted by an access control system associated with a function of the computer.	18 19 20
308I	Unauthorised impairment of data held in computer disk, credit card or other device (summary offence)	21 22
	(1) A person:	23
	(a) who causes any unauthorised impairment of the reliability, security or operation of any data held on a computer disk, credit card or other device used to store data by electronic means, and	24 25 26 27
	(b) who knows that the impairment is unauthorised, and	28
	(c) who intends to cause that impairment, is guilty of an offence.	29 30
	Maximum penalty: Imprisonment for 2 years.	31
	(2) An offence against this section is a summary offence.	32

(3) For the purposes of this section, impairment of the reliability, security or operation of data is <i>unauthorised</i> if the person is not entitled to cause that impairment.	1 2 3
[2] Section 428B Offences of specific intent to which Part applies	4
Omit from the Table to the section the matter relating to section 309 (2).	5

Schedule 2	Amendment of Criminal Procedure Act 1986	1
		2
	(Section 4)	3
Schedule 1	Indictable offences triable summarily	4
	Omit “section 309 (2), (3) or (4) or 310” from item 14 of Table 1 (Indictable offences to be dealt with summarily unless prosecuting authority or person charged elects otherwise).	5
		6
		7
	Insert instead “section 308C (where the serious indictable offence to be committed is punishable by imprisonment for 10 years or less), 308D, 308E, 308F or 308G”.	8
		9
		10