



Canadian Internet Policy and Public Interest Clinic
Clinique d'intérêt public et de politique d'internet du Canada

**AUSTRALIAN, FRENCH, AND UNITED
KINGDOM LEGISLATION
RELEVANT TO IDENTITY THEFT:
AN ANNOTATED REVIEW**

March, 2007

CIPPIC Working Paper No. 3C (ID Theft Series)

www.cippic.ca

CIPPIC Identity Theft Working Paper Series

This series of working papers, researched in 2006, is designed to provide relevant and useful information to public and private sector organizations struggling with the growing problem of identity theft and fraud. It is funded by a grant from the Ontario Research Network on Electronic Commerce (ORNEC), a consortium of private sector organizations, government agencies, and academic institutions. These working papers are part of a broader ORNEC research project on identity theft, involving researchers from multiple disciplines and four post-secondary institutions. For more information on the ORNEC project, see www.ornec.ca.

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Suggested Citation:

CIPPIC (2007), "Australian, French, and U.K. Legislation Relevant to Identity Theft: Annotated Review", CIPPIC Working Paper No.3C (ID Theft Series), March 2007, Ottawa: Canadian Internet Policy and Public Interest Clinic.

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No.1: Identity Theft: Introduction and Background
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No.3A: Canadian Legislation Relevant to Identity Theft: Annotated Review
No.3B: United States Legislation Relevant to Identity Theft: Annotated Review
No.3C: Australian, French, and U.K. Legislation Relevant to Identity Theft: Annotated Review
No.4: Caselaw on Identity Theft
No.5: Enforcement of Identity Theft Laws
No.6: Policy Approaches to Identity Theft
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The Canadian Internet Policy and Public Interest Clinic (CIPPIC) was established at the Faculty of Law, University of Ottawa, in 2003. CIPPIC's mission is to fill voids in law and public policy formation on issues arising from the use of new technologies. The clinic provides undergraduate and graduate law students with a hands-on educational experience in public interest research and advocacy, while fulfilling its mission of contributing effectively to the development of law and policy on emerging issues.

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TABLE OF CONTENTS

	Page
1. AUSTRALIAN STATUTES.....	1
1.1. FEDERAL	1
1.1.1. <i>Criminal Code Act, 1995</i>	1
1.1.2. <i>Cybercrime Act, 2001</i>	1
1.1.3. <i>Financial Transaction Reports Act, 1998</i>	1
1.2. SOUTH AUSTRALIA	2
1.2.1. <i>Criminal Law Consolidation (Identity Theft) Amendment Act 2003</i>	2
2. FRENCH STATUTES	2
2.1. PENAL CODE.....	2
2.2. MONETARY AND FINANCIAL CODE.....	3
3. UNITED KINGDOM STATUTES	3
3.1. CRIMINAL JUSTICE ACT, 2003, c. 44	3
3.2. COMPUTER MISUSE ACT, 1990 c. 18	3
3.3. DATA PROTECTION ACT, 1998 c. 29.....	3
3.4. IDENTITY CARDS ACT, 2006 c. 15	4
3.5. THEFT (AMENDMENT) ACT, 1996 c. 62	4
APPENDIX A: AUSTRALIAN STATUTE EXCERPTS.....	5
FEDERAL.....	5
<i>Criminal Code Act 1995</i>	5
<i>Cybercrime Act 2001</i>	25
<i>Financial Transaction Reports Act 1998</i>	27
SOUTH AUSTRALIA	32
<i>Criminal Law Consolidation (Identity Theft) Amendment Act 2003</i>	32
APPENDIX B: FRENCH STATUTE EXCERPTS	35
PENAL CODE.....	35
MONETARY AND FINANCIAL CODE.....	40
APPENDIX C: UNITED KINGDOM STATUTE EXCERPTS	42
CRIMINAL JUSTICE ACT, 2003, c. 44.....	42
COMPUTER MISUSE ACT, 1990 c. 18	43
DATA PROTECTION ACT, 1998 c. 29	43
IDENTITY CARDS ACT, 2006 c. 15	44
THEFT (AMENDMENT) ACT, 1996 c. 62	46

1. AUSTRALIAN STATUTES

1.1. Federal¹

1.1.1. Criminal Code Act, 1995

The Code criminalizes different types of identity fraud. It does not contain any provisions that specifically deal with the collection, sale or transfer of personal information.

Obtaining property or a financial advantage by deception: Section 134 criminalizes obtaining property or a financial advantage by deception, which covers theft of physical chattels and theft of money.

Other offences involving fraudulent conduct: Section 135 criminalizes general dishonesty, which includes committing a dishonest act to obtain a gain from another person, causing a loss to another person, and gaining a financial advantage with knowledge that the person is not eligible.

False or misleading statements in applications and documents: Section 136 & 137 criminalizes making false or misleading statements in applications and documents, such as credit applications.

Forgery: Sections 144 & 145 criminalize the creation of forged documents and their use.

1.1.2. Cybercrime Act, 2001

This Act criminalizes many forms of computer abuse and theft of data.

Serious computer offences: Section 477.1 criminalizes the use of computers to acquire personal information.

Possession or control of data with intent to commit a computer offence: Section 478.3 criminalizes the possession of data that can be used to commit an offence under section 477.

1.1.3. Financial Transaction Reports Act, 1998

Opening etc. of account with a cash dealer: Section 18 of this Act imposes a duty on “cash dealers” to obtain sufficient information, including the name and address of any person opening an account.

Identification record: Section 20A(1)(b)(i) requires that a “cash dealer” has carried out, and has a record of, the prescribed verification procedure to identify the signatory of a new account. The procedure requires that signatory show the “cash dealer” some identity documents that prove who they are. These documents might include a birth certificate, driver’s licence, passport, pensioner concession card, or even an ATM card for an account

¹ Australian federal statutes can be found at <<http://www.aph.gov.au/library/intguide/law/statutelaw.htm>>.

held with another bank. Each form of identification has a ‘points’ value, ranging from 25 to 100 points. The identification documents provided need to add up to 100 points to be accepted.

Opening account etc. in false name: Section 24 criminalizes the opening of accounts under a false name.

1.2. South Australia²

1.2.1. Criminal Law Consolidation (Identity Theft) Amendment Act 2003³

This Act provides a broad definition of personal identification information.

The Act also creates four new offences, 1) “pretexting” (false pretences); 2) misuse of personal information to commit or facilitate a serious criminal offence; 3) production of prohibited material and 4) possession of prohibited material.

This Act makes an explicit exception for minors who make misrepresentations to acquire tobacco, alcohol or gain entrance into premises to which access is prohibited to persons under the age of 18.

2. FRENCH STATUTES⁴

2.1. Penal Code

The French Criminal Code criminalizes both phases of identity theft and imposes a duty of care on holders of personally identifiable information.

Offences against privacy: Section 226-17 imposes a duty on organizations to take reasonable care of the information they collect about persons. Section 226-18 criminalizes the collection of personal information by means of deception, fraud or illegal means.

Fraudulent obtaining: Section 313 criminalizes obtaining property or a financial advantage by deception, fraud or by using a false name.

Receiving: Section 321 criminalizes the possession and transfer of things that have been obtained by the perpetration of a felony or misdemeanour. This criminalizes selling personal information obtained via fraud.

² South Australian legislation can be found at <http://www.legislation.sa.gov.au/LZ/C/A/CRIMINAL%20LAW%20CONSOL>.

³ For an analysis of this statute see Australian Privacy Foundation, Consultation Draft: Criminal Law Consolidation (Identity Theft) Amendment Act of 2003 (June 2003), online: <http://www.privacy.org/au/Papers/SubmnSAIdTheft0308.pdf>.

⁴ French statutes can be found at <http://www.legifrance.gouv.fr/html/index.html>.

Unauthorized access to automated data processing systems: Section 323 criminalizes obtaining unauthorized access to computer systems. This criminalizes most techniques used to acquire personal information that require the fraudulent use of computers.

Forgery: Section 441 criminalizes the obtainment, use and possession of forged documents.

2.2. Monetary and Financial Code

Counterfeiting: Sections L163-3 and L163-4 criminalize the counterfeiting of cheques and credit or debit cards, and their use and acceptance, with the knowledge that they are counterfeit. Section L164-1 criminalizes the possession, manufacturing and transfer of equipment to commit offences under sections L163-3 & L163-4.

3. UNITED KINGDOM STATUTES⁵

3.1. Criminal Justice Act, 2003, c. 44

Arrestable offences: Section 3 makes giving an untrue statement for procurement of a passport an arrestable offence.

Increase in penalties: Section 286 raises the penalty for fraudulently obtaining a driving licence.

3.2. Computer Misuse Act, 1990 c. 18

Unauthorized access to computer material: Section 1 of this act criminalizes the use of a computer to obtain data without authorization. The effect is to criminalize the use of identity theft techniques such as spyware, wardriving, the use of Trojan horse applications, and any form of hacking. However, it does not criminalize the use of social engineering techniques or phishing, since in these cases people give away the information and it is never accessed directly without authorization.

3.3. Data Protection Act, 1998 c. 29

This Act is the equivalent of the Canadian *Personal Information Protection and Electronic Documents Act* (“PIPEDA”).⁶ It restricts what personal information can be collected and how it may be used. However, as with the Canadian law, it does not have any notification provisions for security breaches which might result in the personal information of customers being compromised.

Compensation for failure to comply with certain requirements: Section 13 provides remedies for “data subjects” who have had their identity stolen as a result of a contravention of this Act by a “data controller”.

⁵ United Kingdom statutes can be found at <<http://www.opsi.gov.uk/acts.htm>>.

⁶ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

Unlawful obtaining etc. of personal data: Section 55 criminalizes the unlawful obtainment of personal data from a "data controller". Not only does this section criminalize the sale of such data, but it also criminalizes simply offering such data for sale. It also defines a simple advertisement of personal data as an offer to sell. This section criminalizes hacking, physical theft of storage media, and the use of spyware and social engineering to obtain personal information.

3.4. Identity Cards Act, 2006 c. 15

Possession of false identity documents etc.: Section 25 criminalizes the possession of false identity documents or identity documents that relate to others. For an offence to occur, the possession must be with the intention of using or inducing others to use the documents to establish a registrable fact. Section 25 also criminalizes the possession of any apparatus designed to make false identity documents or any material used to make false identity documents.

3.5. Theft (Amendment) Act, 1996 c. 62

Obtaining a money transfer by deception: Section 1 amends section 15 of the *Theft Act* to criminalize obtaining of a money transfer by deception.

Dishonestly retaining a wrongful credit: Section 2 amends section 24 of the *Theft Act* to impose a duty to take reasonable steps to get a wrongful credit cancelled.

APPENDIX A: AUSTRALIAN STATUTE EXCERPTS

Federal

Criminal Code Act 1995

Obtaining property or a financial advantage by deception

134.1 Obtaining property by deception

- (1) A person is guilty of an offence if:
 - (a) the person, by a deception, dishonestly obtains property belonging to another with the intention of permanently depriving the other of the property; and
 - (b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) Absolute liability applies to the paragraph (1)(b) element of the offence.

Obtaining property

(3) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), a person (the first person) is taken to have obtained property if, and only if:

- (a) the first person obtains ownership, possession or control of it for himself or herself or for another person; or
- (b) the first person enables ownership, possession or control of it to be retained by himself or herself; or
- (c) the first person induces a third person to pass ownership, possession or control of it to another person; or
- (d) the first person induces a third person to enable another person to retain ownership, possession or control of it; or
- (e) subsection (9) or (10) applies.

(4) The definition of obtaining in section 130.1 does not apply for the purposes of this section (or for the purposes of the application of section 132.1 to this section).

(5) For the purposes of this section, a person’s obtaining of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

Intention of permanently depriving a person of

- (6) For the purposes of this section, if:
 - (a) a person obtains property belonging to another without meaning the other permanently to lose the thing itself; and

property

(b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;

the person has the intention of permanently depriving the other of it.

(7) For the purposes of subsection (6), a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(8) For the purposes of subsection (6), if:

(a) a person has possession or control (lawfully or not) of property belonging to another; and

(b) the person parts with the property under a condition as to its return that the person may not be able to perform; and

(c) the parting is done for purposes of the person's own and without the other's authority;

the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.

Money transfers

(9) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if a person (the first person) causes an amount to be transferred from an account held by another person (the second person) to an account held by the first person:

(a) the amount is taken to have been property that belonged to the second person; and

(b) the first person is taken to have obtained the property for himself or herself with the intention of permanently depriving the second person of the property.

(10) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if a person (the first person) causes an amount to be transferred from an account held by another person (the second person) to an account held by a third person:

(a) the amount is taken to have been property that belonged to the second person; and

(b) the first person is taken to have obtained the property for the third person with the intention of permanently depriving the second person of the property.

(11) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if:

- (a) a credit is made to an account (the credited account); and
- (b) a debit is made to another account (the debited account); and
- (c) either:
 - (i) the credit results from the debit; or
 - (ii) the debit results from the credit;

the amount of the credit is taken to be transferred from the debited account to the credited account.

(12) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), a person is taken to cause an amount to be transferred from an account if the person induces another person to transfer the amount from the account (whether or not the other person is the holder of the account).

*General
deficiency*

(13) A person may be convicted of an offence against this section involving all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were obtained over a period of time.

(14) A person may be convicted of an offence against this section involving all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were obtained over a period of time.

*Alternative
verdicts*

(15) If, in a prosecution for an offence of theft, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against this section, the trier of fact may find the defendant not guilty of the offence of theft but guilty of the offence against this section, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

(16) If, in a prosecution for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft, the trier of fact may find the defendant not guilty of the offence against this section but guilty of the offence of theft, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

134.2 Obtaining a financial advantage by deception

- (1) A person is guilty of an offence if:
 - (a) the person, by a deception, dishonestly obtains a financial

advantage from another person; and

(b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) Absolute liability applies to the paragraph (1)(b) element of the offence.

134.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division (b) the other person is a Commonwealth entity.

135.1 General dishonesty

Obtaining a gain

(1) A person is guilty of an offence if:

(a) the person does anything with the intention of dishonestly obtaining a gain from another person; and

(b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

Causing a loss

(3) A person is guilty of an offence if:

(a) the person does anything with the intention of dishonestly causing a loss to another person; and

(b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

(5) A person is guilty of an offence if:

(a) the person dishonestly causes a loss, or dishonestly causes a risk of loss, to another person; and

(b) the first-mentioned person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring; and

*Influencing a
Commonwealth
public official*

(c) the other person is a Commonwealth entity.

Penalty: Imprisonment for 5 years.

(6) Absolute liability applies to the paragraph (5)(c) element of the offence.

(7) A person is guilty of an offence if:

(a) the person does anything with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official; and

(b) the public official is a Commonwealth public official; and

(c) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 5 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew:

(a) that the official was a Commonwealth public official; or

(b) that the duties were duties as a Commonwealth public official.

135.2 Obtaining financial advantage

(1) A person is guilty of an offence if:

(a) the person engages in conduct; and

(aa) as a result of that conduct, the person obtains a financial advantage for himself or herself from another person; and

(ab) the person knows or believes that he or she is not eligible to receive that financial advantage; and

(b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to the paragraph (1)(b) element of the offence.

(2) A person is guilty of an offence if:

(a) the person engages in conduct; and

(aa) as a result of that conduct, the person obtains a financial advantage for another person from a third person; and

(ab) the person knows or believes that the other person is not eligible to receive that financial advantage; and

(b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 12 months.

(2A) Absolute liability applies to the paragraph (2)(b) element of the offence.

(3) For the purposes of subsection (2), a person is taken to have obtained a financial advantage for another person from a Commonwealth entity if the first - mentioned person induces the Commonwealth entity to do something that results in the other person obtaining the financial advantage.

(4) The definition of **obtaining** in section 130.1 does not apply to this section.

135.4 Conspiracy to defraud

Obtaining a gain

(1) A person is guilty of an offence if:

(a) the person conspires with another person with the intention of dishonestly obtaining a gain from a third person; and

(b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

Causing a loss

(3) A person is guilty of an offence if:

(a) the person conspires with another person with the intention of dishonestly causing a loss to a third person; and

(b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

(5) A person is guilty of an offence if:

(a) the person conspires with another person to dishonestly cause a loss, or to dishonestly cause a risk of loss, to a third person; and

(b) the first-mentioned person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring; and

(c) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the third person was a Commonwealth entity.

*Influencing a
Commonwealth
public official*

(7) A person is guilty of an offence if:

(a) the person conspires with another person with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official; and

(b) the public official is a Commonwealth public official; and

(c) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew:

(a) that the official was a Commonwealth public official; or

(b) that the duties were duties as a Commonwealth public official.

*General
provisions*

(9) For a person to be guilty of an offence against this section:

(a) the person must have entered into an agreement with one or more other persons; and

(b) the person and at least one other party to the agreement must have intended to do the thing pursuant to the agreement; and

(c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.

(10) A person may be found guilty of an offence against this section even if:

(a) obtaining the gain, causing the loss, causing the risk of loss, or influencing the Commonwealth public official, as the case may be, is impossible; or

(b) the only other party to the agreement is a body corporate; or

(c) each other party to the agreement is a person who is not criminally responsible; or

(d) subject to subsection (11), all other parties to the agreement have been acquitted of the offence.

(11) A person cannot be found guilty of an offence against this

section if:

(a) all other parties to the agreement have been acquitted of such an offence; and

(b) a finding of guilt would be inconsistent with their acquittal.

(12) A person cannot be found guilty of an offence against this section if, before the commission of an overt act pursuant to the agreement, the person:

(a) withdrew from the agreement; and

(b) took all reasonable steps to prevent the doing of the thing.

(13) A court may dismiss a charge of an offence against this section if the court thinks that the interests of justice require the court to do so.

(14) Proceedings for an offence against this section must not be commenced without the consent of the Director of Public Prosecutions. However, before the necessary consent has been given, a person may be:

(a) arrested for an offence against this section; or

(b) charged with an offence against this section; or

(c) remanded in custody or released on bail in connection with an offence against this section.

135.5 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

136.1 False or misleading statements in applications

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Knowledge

(1) A person is guilty of an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the person does so knowing that the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

- (c) the statement is made in, or in connection with:
 - (i) an application for a licence, permit or authority; or
 - (ii) an application for registration; or
 - (iii) an application or claim for a benefit; and
- (d) any of the following subparagraphs applies:
 - (i) the statement is made to a Commonwealth entity;
 - (ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
 - (iii) the statement is made in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to each of the subparagraph (1)(d)(i), (ii) and (iii) elements of the offence.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the statement is not false or misleading in a material particular.

Note: defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

Recklessness

- (4) A person is guilty of an offence if:
 - (a) the person makes a statement (whether orally, in a document or in any other way); and
 - (b) the person does so reckless as to whether the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
 - (c) the statement is made in, or in connection with:
 - (i) an application for a licence, permit or authority; or
 - (ii) an application for registration; or

- (iii) an application or claim for a benefit; and
- (d) any of the following subparagraphs applies:
 - (i) the statement is made to a Commonwealth entity;
 - (ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
 - (iii) the statement is made in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 6 months.

(4A) Absolute liability applies to each of the subparagraph (4)(d)(i), (ii) and (iii) elements of the offence.

(5) Subsection (4) does not apply as a result of subparagraph (4)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

(6) Subsection (4) does not apply as a result of subparagraph (4)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3).

Alternative verdicts

(7) If, in a prosecution for an offence against subsection (1), the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection (4), the trier of fact may find the defendant not guilty of the offence against subsection (1) but guilty of the offence against subsection (4), so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (4).

Definition

(9) In this section:

benefit includes any advantage and is not limited to property.

137.1 False or misleading information

(1) A person is guilty of an offence if:

- (a) the person gives information to another person; and
- (b) the person does so knowing that the information:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information is misleading; and
- (c) any of the following subparagraphs applies:
 - (i) the information is given to a Commonwealth entity;
 - (ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
 - (iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

(4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3).

(5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the first person) to the person mentioned in that subparagraph (the second person), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

(6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:

“Giving false or misleading information is a serious offence”.

137.2 False or misleading documents

(1) A person is guilty of an offence if:

- (a) the person produces a document to another person; and
- (b) the person does so knowing that the document is false or misleading; and
- (c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

137.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

144.1 Forgery

(1) A person is guilty of an offence if:

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly induce a third person in the third person's capacity as a public official to accept it as genuine; and

(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.

(3) A person is guilty of an offence if:

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.

(5) A person is guilty of an offence if:

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly induce a third person to accept it as genuine; and

(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

(7) A person is guilty of an offence if:

(a) the person makes a false document with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

(9) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1), (3), (5) or (7).

145.1 Using forged document

(1) A person is guilty of an offence if:

(a) the person knows that a document is a false document and uses it with the intention of:

(i) dishonestly inducing another person in the other person's capacity as a public official to accept it as genuine; and

(ii) if it is so accepted, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and

(b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a

capacity as a Commonwealth public official.

- (3) A person is guilty of an offence if:
- (a) the person knows that a document is a false document and uses it with the intention of:
 - (i) dishonestly causing a computer, a machine or an electronic device to respond to the document as if the document were genuine; and
 - (ii) if it is so responded to, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and
 - (b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.

- (5) A person is guilty of an offence if:
- (a) the person knows that a document is a false document and uses it with the intention of:
 - (i) dishonestly inducing another person to accept it as genuine; and
 - (ii) if it is so accepted, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and
 - (b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

- (7) A person is guilty of an offence if:
- (a) the person knows that a document is a false document and uses it with the intention of:
 - (i) dishonestly causing a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

145.2 Possession of forged document

(1) A person is guilty of an offence if:

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly induce a third person in the third person's capacity as a public official to accept it as genuine; and

(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the capacity is a capacity as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.

(3) A person is guilty of an offence if:

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the response is in connection with the operations of a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the response was in connection with the operations of a Commonwealth entity.

(5) A person is guilty of an offence if:

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly induce a third person to accept it as genuine; and

(ii) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(6) In a prosecution for an offence against subsection (5), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

(7) A person is guilty of an offence if:

(a) the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it:

(i) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and

(ii) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function; and

(b) the false document is a false Commonwealth document.

Penalty: Imprisonment for 10 years.

(8) In a prosecution for an offence against subsection (7), it is not necessary to prove that the defendant knew that the false document was a false Commonwealth document.

145.3 Possession, making or adaptation of devices etc. for making forgeries

(1) A person is guilty of an offence if:

(a) the person knows that a device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and

(b) the person has the device, material or thing in his or her possession with the intention that the person or another person will use it to commit an offence against section 144.1.

Penalty: Imprisonment for 10 years.

(2) A person is guilty of an offence if:

(a) the person makes or adapts a device, material or other thing; and

(b) the person knows that the device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and

(c) the person makes or adapts the device, material or thing with the intention that the person or another person will use it to commit an offence against section 144.1.

Penalty: Imprisonment for 10 years.

(3) A person is guilty of an offence if:

(a) the person knows that a device, material or other thing is designed or adapted for the making of a false Commonwealth document (whether or not the device, material or thing is designed or adapted for another purpose); and

(b) the person has the device, material or thing in his or her possession; and

(c) the person does not have a reasonable excuse for having the device, material or thing in his or her possession.

Penalty: Imprisonment for 2 years.

Note: A defendant bears an evidential burden in relation to the matter in paragraph (3)(c). See subsection 13.3(3).

(4) A person is guilty of an offence if:

(a) the person makes or adapts a device, material or other thing; and

(b) the person knows that the device, material or other thing is designed or adapted for the making of a false Commonwealth document (whether or not the device, material or thing is designed or adapted for another purpose).

Penalty: Imprisonment for 2 years.

Note: See also section 10.5 (lawful authority).

145.4 Falsification of documents etc.

(1) A person is guilty of an offence if:

- (a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and
- (b) the document is:
 - (i) kept, retained or issued for the purposes of a law of the Commonwealth; or
 - (ii) made by a Commonwealth entity or a person in the capacity of a Commonwealth public official; or
 - (iii) held by a Commonwealth entity or a person in the capacity of a Commonwealth public official; and
- (c) the first-mentioned person does so with the intention of:
 - (i) obtaining a gain; or
 - (ii) causing a loss.

Penalty: Imprisonment for 7 years.

(1A) Absolute liability applies to the paragraph (1)(b) element of the offence.

(2) A person is guilty of an offence if:

- (a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and
- (b) the person does so with the intention of:
 - (i) obtaining a gain from another person; or
 - (ii) causing a loss to another person; and
- (c) the other person is a Commonwealth entity.

Penalty: Imprisonment for 7 years.

(3) In a prosecution for an offence against subsection (2), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

145.5 Giving information derived from false or misleading documents

- (1) A person is guilty of an offence if:
- (a) the person dishonestly gives information to another person; and
 - (b) the information was derived, directly or indirectly, from a document that, to the knowledge of the first-mentioned person, is false or misleading in a material particular; and
 - (c) the document is:
 - (i) kept, retained or issued for the purposes of a law of the Commonwealth; or
 - (ii) made by a Commonwealth entity or a person in the capacity of a Commonwealth public official; or
 - (iii) held by a Commonwealth entity or a person in the capacity of a Commonwealth public official; and
 - (d) the first - mentioned person does so with the intention of:
 - (i) obtaining a gain; or
 - (ii) causing a loss.

Penalty: Imprisonment for 7 years.

(1A) Absolute liability applies to the paragraph (1)(c) element of the offence.

- (2) A person is guilty of an offence if:
- (a) the person dishonestly gives information to another person; and
 - (b) the information was derived, directly or indirectly, from a document that, to the knowledge of the first-mentioned person, is false or misleading in a material particular; and
 - (c) the first-mentioned person does so with the intention of:
 - (i) obtaining a gain from another person; or
 - (ii) causing a loss to another person; and
 - (d) the other person is a Commonwealth entity.

Penalty: Imprisonment for 7 years.

(3) In a prosecution for an offence against subsection (2), it is not necessary to prove that the defendant knew that the other person was a Commonwealth entity.

145.6 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to each offence against this Division.

Cybercrime Act 2001

Serious
computer
offences

*Intention to
commit a
serious
Commonwealth,
State or
Territory
offence*

477.1 Unauthorised access, modification or impairment with intent to commit a serious offence

- (1) A person is guilty of an offence if:
- (a) the person causes:
 - (i) any unauthorised access to data held in a computer; or
 - (ii) any unauthorised modification of data held in a computer; or
 - (iii) any unauthorised impairment of electronic communication to or from a computer; and
 - (b) the unauthorised access, modification or impairment is caused by means of a telecommunications service; and
 - (c) the person knows the access, modification or impairment is unauthorised; and
 - (d) the person intends to commit, or facilitate the commission of, a serious offence against a law of the Commonwealth, a State or a Territory (whether by that person or another person) by the access, modification or impairment.
- (2) Absolute liability applies to paragraph (1)(b).
- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the offence was:
- (a) an offence against a law of the Commonwealth, a State or a Territory; or
 - (b) a serious offence.

*Intention to
commit a
serious
Commonwealth
offence*

- (4) A person is guilty of an offence if:
- (a) the person causes:
 - (i) any unauthorised access to data held in a computer; or
 - (ii) any unauthorised modification of data held in a computer;

or

(iii) any unauthorised impairment of electronic communication to or from a computer; and

(b) the person knows the access, modification or impairment is unauthorised; and

(c) the person intends to commit, or facilitate the commission of, a serious offence against a law of the Commonwealth (whether by that person or another person) by the access, modification or impairment.

(5) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence was:

(a) an offence against a law of the Commonwealth; or

(b) a serious offence.

Penalty

(6) A person who is guilty of an offence against this section is punishable, on conviction, by a penalty not exceeding the penalty applicable to the serious offence.

Impossibility

(7) A person may be found guilty of an offence against this section even if committing the serious offence is impossible.

No offence of attempt

(8) It is not an offence to attempt to commit an offence against this section.

Meaning of serious offence

(9) In this section:

serious offence means an offence that is punishable by imprisonment for life or a period of 5 or more years.

478.3 Possession or control of data with intent to commit a computer offence

(1) A person is guilty of an offence if:

(a) the person has possession or control of data; and

(b) the person has that possession or control with the intention that the data be used, by the person or another person, in:

(i) committing an offence against Division 477; or

(ii) facilitating the commission of such an offence.

Penalty: 3 years imprisonment.

(2) A person may be found guilty of an offence against this section even if committing the offence against Division 477 is impossible.

No offence of attempt

(3) It is not an offence to attempt to commit an offence against this section.

Meaning of possession or control of data

(4) In this section, a reference to a person having possession or control of data includes a reference to the person:

- (a) having possession of a computer or data storage device that holds or contains the data; or
- (b) having possession of a document in which the data is recorded; or
- (c) having control of data held in a computer that is in the possession of another person (whether inside or outside Australia).

Financial Transaction Reports Act 1998

18 Opening etc. of account with a cash dealer

(1) This section applies where:

(a) on a day (in this subsection called the transaction day) after the commencement of this section, a person:

- (i) opens an account (other than a facility or arrangement for a safety deposit box or for any other form of safe deposit) with a cash dealer; or
- (ii) becomes a signatory of such an account with a cash dealer;

and either of the following subparagraphs applies:

- (iii) on a day (in this section called the infringement day), being the transaction day or a later day, the credit balance of the account exceeds \$1,000;
- (iv) on a day (in this section also called the infringement day), being at least 30 days after the transaction day, the aggregate of the amounts credited to the account within the last 30 days exceeds \$2,000; or

(b) on a day after the commencement of this section (in this section also called the infringement day) a person:

- (i) opens an account with a cash dealer, being a facility or arrangement for a safety deposit box or for any other form of safe deposit; or

(ii) becomes a signatory of such an account with a cash dealer.

(2) If, at the end of the infringement day, the cash dealer does not have the account information about the account, the account is blocked with respect to each signatory until the cash dealer has the information or the Director gives a notice under subsection 19(2).

Note: a cash dealer is not required to obtain any information that has already been obtained in relation to another account.

(2A) If, at the end of the infringement day, the cash dealer does not have the signatory information about the person (unverified signatory), the account is blocked with respect to that signatory until the cash dealer has that information or the Director gives a notice under subsection 19(2).

Note: a cash dealer is not required to obtain any information that has already been obtained in relation to another account.

(3) At the end of the infringement day, the cash dealer commits an offence against this subsection unless it has made reasonable efforts, on or before that day, to obtain the account information and the signatory information.

(3A) Subsection (3) does not apply in relation to accounts that are RSAs.

(4) If:

(a) a signatory, knowing that the account is blocked, makes a withdrawal from the account at any time when the account is blocked under subsection (2); or

(b) the unverified signatory, knowing that the account is blocked, makes a withdrawal from the account at any time when the account is blocked under subsection (2A);

the signatory commits an offence against this subsection.

(4A) If:

(a) a signatory makes a withdrawal from the account at any time when the account is blocked under subsection (2); or

(b) the unverified signatory makes a withdrawal from the account at any time when the account is blocked under subsection (2A);

the cash dealer commits an offence against this subsection.

(4B) Subsections (2), (2A), (4) and (4A) do not apply in relation to withdrawals:

(a) made as a result of a request under paragraph 50(1)(a) of the Retirement Savings Accounts Act 1997; or

(b) made as a result of the death of the person who is the holder of the account for the purposes of the Retirement Savings Accounts Act 1997; or

(c) made under section 89, 195 or 196 of the Retirement Savings Accounts Act 1997; or

(ca) made in accordance with section 17 or 18 of the Superannuation (Unclaimed Money and Lost Members) Act 1999; or

(d) that are used to make payments of insurance premiums in accordance with the terms and conditions of the account.

(6) An offence against subsection (3), (4) or (4A) is punishable, upon conviction, by imprisonment for not more than 2 years.

Note: Subsection 4B(2) of the Crimes Act 1914 allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on an individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(8) Where an account other than an RSA has been blocked for 12 months after the infringement day, the cash dealer shall, within 14 days after the end of that period, give the Director written notice of that fact, setting out the balance of an account and such other particulars as are prescribed.

(8A) If:

(a) an account other than an RSA has been blocked for 12 months after the infringement day; and

(b) as a result of the cash dealer's obtaining account information or signatory information after the commencement of this subsection, the account ceases to be blocked with respect to a signatory with respect to whom it had been blocked;

the cash dealer must, within 14 days after the day on which the dealer obtained the information, give the Director written notice that the account has become unblocked to that extent and for that reason.

(9) A cash dealer who contravenes subsection (8) or (8A) is guilty of an offence against this subsection punishable, upon conviction, by a fine of not more than 10 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence. The amount of a penalty unit is stated in section 4AA of that Act.

(9A) Subsection (9) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(10) The regulations may prescribe:

- (a) an amount instead of an amount specified in subparagraph (1)(a)(iii) or (iv); or
- (b) a period instead of the period of 30 days last referred to in subparagraph (1)(a)(iv).

20A Identification record

(1) For the purposes of this Act, a cash dealer has an identification record for a signatory to an account if, and only if:

- (a) the cash dealer has an identification reference for the signatory (whether or not the reference was obtained in connection with that account); or
- (b) the cash dealer is an identifying cash dealer and:
 - (i) the cash dealer has carried out, and has a record of, the prescribed verification procedure to identify the signatory; or
 - (ii) the cash dealer has carried out, and has a record of, a verification procedure to identify the signatory, being a procedure approved by the Director for the cash dealer;
 (whether or not the verification procedure was carried out in connection with that account).

Example: A solicitor administered the estate of a deceased person who held an account with an identifying cash dealer. The cash dealer carried out the prescribed verification procedure to identify the solicitor when the solicitor closed the deceased person's account.

The solicitor is now administering the estate of another deceased person who also held an account with the cash dealer. If the cash dealer has a record of the verification procedure used to identify the solicitor in relation to the first deceased person's account, it also has an identification record for the solicitor in relation to the other deceased person's account.

(2) A verification procedure that was prescribed for the purposes of subsection 20(8) before the commencement of this section is taken to have been prescribed for the purposes of subparagraph (1)(b)(i).

24 Opening account etc. in false name

(1) A person shall not open an account with a cash dealer in a false name.

(2) A person shall not operate an account with a cash dealer in a false name.

(2A) A person must not operate, or authorise the operation of, an account with a cash dealer if the account is in a false name.

(3) Where a person is commonly known by 2 or more different names, the person shall not use one of those names in opening an account with a cash dealer unless the person has previously disclosed the other name or names to the cash dealer.

(4) Where a person is commonly known by 2 or more different names, the person shall not use one of those names in operating an account with a cash dealer unless the person has previously disclosed the other name or names to the cash dealer.

(5) Where a person using a particular name in dealings with a cash dealer discloses to the dealer a different name or different names by which the person is commonly known, the dealer shall make a record of the disclosure and shall, upon request in writing from the Director, give the Director a copy of that record.

(6) A person who contravenes subsection (1), (2), (2A), (3), (4) or (5) is guilty of an offence against this subsection punishable, upon conviction, by imprisonment for not more than 2 years.

Note: Subsection 4B(2) of the Crimes Act 1914 allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on an individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(7) For the purposes of this section:

(a) a person opens an account in a false name if the person, in

opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known; and

(b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the cash dealer concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and

(c) an account is in a false name if it was opened in a false name, whether before or after the commencement of this paragraph.

(8) This section does not apply in relation to a person and an account that is an RSA within the meaning of the Retirement Savings Accounts Act 1997 if:

(a) the person (the employer) is an employer, within the meaning of that Act, of another person (the employee); and

(b) the employer made the application for the account on behalf of the employee.

South Australia

Criminal Law Consolidation (Identity Theft) Amendment Act 2003

"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;

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.

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.

APPENDIX B: FRENCH STATUTE EXCERPTS**Penal Code****ARTICLE 226-17**

To carry out, or to cause to be carried out, the automated processing of data containing names without taking all useful precautions to preserve the confidentiality of such information and in particular to prevent it being tampered with, damaged or communicated to unauthorised third parties, is punished by five years' imprisonment and a fine of €300,000.

ARTICLE 226-18

The collection of data by fraudulent, unfair or unlawful means, or the processing of name-bearing information relating to a natural person despite this person's opposition, where this objection is based on legitimate grounds, is punished by five years' imprisonment and a fine of €300,000.

In the case of an automated processing of name-bearing data set up for medical research, the same penalty applies to carrying out such processing:

1° without having previously individually informed the persons on whose account the name-bearing data is collected or transmitted of their right of access, rectification and objection, and of the type of information transmitted and of the identity of the recipient of the data;

2° despite the objection of the person concerned, or where the law so provides, in the absence of the person's informed and express consent, or, if it concerns a deceased person, despite the refusal expressed by such person when still alive.

ARTICLE 226-19

Apart from the cases set out by law, the recording or preserving in a computerised memory, without the express agreement of the persons concerned, of name-bearing data which, directly or indirectly reveals the racial origins, political, philosophical or religious opinions, trade union affiliations or the sexual morals of the subjects, is punished by five years' imprisonment and a fine of €300,000.

The same penalty applies to the recording or preserving in a computerised memory of name-bearing information relating to offences, convictions or supervision measures outside the cases provided for by law.

ARTICLE 313-1

Fraudulent obtaining is the act of deceiving a natural or legal person by the use of a false name or a false capacity, by the abuse of a truthful capacity, or by means of unlawful manoeuvres, and thus to lead such a person, to his prejudice or to the prejudice of a third party, to transfer funds, valuables or any property, to provide a service or to consent to an act incurring or discharging an obligation.

Fraudulent obtaining is punished by five years' imprisonment and a fine of €375,000.

ARTICLE 313-2

The penalty is increased to seven years' imprisonment and a fine of €750,000 where the fraudulent obtaining was committed:

1° by a person holding public authority or discharging a public service mission, in the exercise or at the occasion of the exercise of the functions or mission;

2° by a person unlawfully assuming the capacity of a person holding a public office or vested with a public service mission;

3° by a person making a public appeal with a view to issuing securities or raising funds for humanitarian or social assistance;

4° to the prejudice of a person whose particular vulnerability, due to age, sickness or disability, or to a psychic or physical deficiency or to a state of pregnancy, is apparent or known to offender;

5° by an organised gang.

ARTICLE 313-3

Attempt to commit the offence set out under this Section of the present Code is subject to the same penalties.

The provisions of article 311-12 are applicable to the misdemeanour of fraudulent obtaining.

ARTICLE 321-1

Receiving is the concealment, retention or transfer a thing, or acting as an intermediary in its transfer, knowing that that thing was obtained by a felony or misdemeanour.

Receiving is also the act of knowingly benefiting in any manner from the product of a felony or misdemeanour.

Receiving is punished by five years' imprisonment and a fine of € 375,000.

ARTICLE 321-2

Receiving is punished by ten years' imprisonment and a fine of € 750,000:

1° where it is committed habitually or by using the facilities conferred by the exercise of trade or profession;

2° where it was committed by an organised gang.

Article 323-1

Fraudulently accessing or remaining within all or part of an automated data processing system is punished by one year's imprisonment and a fine of €15,000.

Where this behaviour causes the suppression or modification of data contained in that system, or any alteration of the functioning of that system, the sentence is two years' imprisonment and a fine of €30,000.

ARTICLE 323-2

Obstruction or interference with the functioning of an automated data processing system is punished by three years' imprisonment and a fine of €45,000.

ARTICLE 323-3

The fraudulent introduction of data into an automated data processing system or the fraudulent suppression or modification of the data that it contains is punished by three years' imprisonment and a fine of €45,000.

ARTICLE 323-4

The participation in a group or conspiracy established with a view to the preparation of one or more offences set out under articles 323-1 to 323-3, and demonstrated by one or more material actions, is punished by the penalties prescribed for offence in preparation or the one that carries the heaviest penalty.

ARTICLE 323-5

Natural persons convicted of any of the offences provided for under the present Chapter also incur the following additional penalties:

1° forfeiture of civic, civil and family rights, pursuant to the conditions set out under article 131-26;

2° prohibition, pursuant to the conditions set out under article 131-27 to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, for a maximum period of five years;

3° confiscation of the thing which was used or intended for the commission of the offence, or of the thing which is the product of it, with the exception of articles subject to restitution;

4° mandatory closure, for a maximum period of five years of the business premises or of one or more of the premises of the undertaking used to commit the offences;

5° disqualification from public tenders for a maximum period of five years;

6° prohibition to draw cheques, except those allowing the withdrawal of funds by the drawer from the drawee or certified cheques, for a maximum period of five years;

7° public display or dissemination of the decision, in accordance with the conditions set out under article 131-35.

ARTICLE 323-6

Legal persons may incur criminal liability for the offences referred to under the present Chapter pursuant to the conditions set out under article 121-2.

The penalties incurred by legal persons are:

1° a fine, pursuant to the conditions set out under article 131-38;

2° the penalties referred to under article 131-39.

The prohibition referred to under 2° of article 131-39 applies to the activity in the course of which or on the occasion of the performance of which the offence was committed.

ARTICLE 323-7

Attempt to commit the misdemeanours referred to under articles 323-1 to 323-3 is subject to the same penalties.

Article 441-1

Forgery consists of any fraudulent alteration of the truth liable to cause harm and made by any means in a document or other medium of expression of which the object is, or effect may be, to provide evidence of a right or of a situation carrying legal consequences.

Forgery and the use of forgeries is punished by three years' imprisonment and a fine of €45,000.

ARTICLE 441-2

Forgery committed in a document delivered by a public body for the purpose of establishing a right, an identity or a capacity, or to grant an authorisation is punished by five years' imprisonment and a fine of € 75,000.

The use of a forgery specified in the previous paragraph is subject to the same penalties.

The penalty is increased to seven years' imprisonment and to a fine of € 100,000 where the forgery or the use of the forgery is committed:

- 1° by a person holding public authority or discharging a public service mission acting in the exercise of his office;
- 2° habitually;
- 3° or with the intent to facilitate the commission of a felony or to gain impunity for the perpetrator.

ARTICLE 441-3

The unlawful possession of any of the forged documents defined by article 441-2 is punished by two years' imprisonment and a fine of € 30,000.

The penalty is increased to five years' imprisonment and to a fine of € 75,000 where more than one forged documents are unlawfully possessed.

ARTICLE 441-4

Forgery in an authentic or public document or a record prescribed by a public authority is punished by ten years' imprisonment and a fine of € 150,000.

The use of a forgery as described in the previous paragraph is subject to the same penalties.

The penalty is increased to fifteen years' criminal imprisonment and to a fine of €225,000 where the forgery or the use of forgery was committed by a person holding public authority or to discharge a public

service mission whilst acting in the exercise of his office or mission.

ARTICLE 441-5

Unlawfully procuring for another person a document delivered by a public body for the purpose of establishing a right, an identity or capacity, or the grant of an authorisation is punished by five years' imprisonment and a fine of €75,000.

The penalty is increased to seven years' imprisonment and to a fine of €100,000 where the offence is committed:

1° by a person holding public authority or to discharge a public service mission whilst acting in the exercise of his office;

2° habitually;

3° or with the intent to facilitate the commission of a felony or to gain impunity for the perpetrator.

ARTICLE 441-6

Unlawfully obtaining from a public administration or from an institution discharging a public service mission, by any fraudulent means, any document intended to establish a right, an identity or a capacity, or to grant an authorisation is punished by two years' imprisonment and a fine of €30,000.

The same penalties apply to the submission of a false statement so as to obtain from a public administration or from an institution discharging a public service mission an allowance, a cash payment or benefit that is not due.

Monetary and Financial Code

Article L163-3

Whoever commits the following offences shall be punished by seven years' imprisonment and a fine of 750,000 euros:

1. Counterfeiting or forging a cheque;
2. Knowingly using or attempting to use a counterfeit or forged cheque;
3. Knowingly agreeing to accept a counterfeit or forged cheque.

Article L163-4

The penalties imposed by Article L. 163-3 also apply to whoever:

1. Counterfeits or forges a payment card or withdrawal card;
2. Knowingly attempts to use a counterfeit or forged payment card or withdrawal card;
3. Knowingly agrees to accept a payment made using a counterfeit or forged payment card or withdrawal card.

Article L163-4-1

Whoever manufactures, acquires, stores, transfers or offers to make available equipment, instruments, computer programs or any data designed or specially adapted to commit the offences envisaged in 1 of Article L. 163-3 and 1 of Article L. 163-4 shall incur a term of seven years' imprisonment and a fine of 750,000 euros.

APPENDIX C: UNITED KINGDOM STATUTE EXCERPTS

Criminal Justice Act, 2003, c. 44

3. Arrestable offences

(1) Schedule 1A to the 1984 Act (specific offences which are arrestable offences) is amended as follows.

(2) After paragraph 2 there is inserted-

"2ZA Criminal Justice Act 1925

An offence under section 36 of the Criminal Justice Act 1925 (untrue statement for procuring a passport)."

(3) After paragraph 6 there is inserted-

"6A Misuse of Drugs Act 1971

An offence under section 5(2) of the Misuse of Drugs Act 1971 (having possession of a controlled drug) in respect of cannabis or cannabis resin (within the meaning of that Act)."

(4) After paragraph 17 there is inserted-

"17A An offence under section 174 of the Road Traffic Act 1988 (false statements and withholding material information)."

286. Increase in penalties for offences under section 174 of Road Traffic Act 1988

(1) In Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (c. 53) (prosecution and punishment of offences), in the entry relating to section 174 of the Road Traffic Act 1988 (c. 52) (false statements and withholding material information), for columns (3) and (4) there is substituted-

"(a) Summarily (a) 6 months or the statutory maximum or both

(b) On indictment (b) 2 years or a fine or both."

(2) Section 282(3) (increase in maximum term that may be imposed on summary conviction of offence triable either way) has effect in relation to the entry amended by subsection (1) as it has effect in relation to any other enactment contained in an Act passed before this Act.

(3) This section does not apply in relation to any offence committed before the commencement of this section.

Computer Misuse Act, 1990 c. 18

Unauthorised
access to
computer
material.

- 1.**—(1) A person is guilty of an offence if—
- (a) he causes a computer to perform any function with intent to secure access to any program or data held in any computer;
 - (b) the access he intends to secure is unauthorised; and
 - (c) he knows at the time when he causes the computer to perform the function that that is the case.
- (2) The intent a person has to have to commit an offence under this section need not be directed at—
- (a) any particular program or data;
 - (b) a program or data of any particular kind; or
 - (c) a program or data held in any particular computer.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

Data Protection Act, 1998 c. 29

Compensation
for failure to
comply with
certain
requirements.

- 13.** - (1) An individual who suffers damage by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that damage.
- (2) An individual who suffers distress by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that distress if-
- (a) the individual also suffers damage by reason of the contravention, or
 - (b) the contravention relates to the processing of personal data for the special purposes.
- (3) In proceedings brought against a person by virtue of this section it is a defence to prove that he had taken such care as in all the circumstances was reasonably required to comply with the requirement concerned.

Unlawful
obtaining
etc. of
personal

- 55.** - (1) A person must not knowingly or recklessly, without the consent of the data controller-
- (a) obtain or disclose personal data or the information contained in

his possession or under his control-

- (a) an identity document that is false and that he knows or believes to be false;
- (b) an identity document that was improperly obtained and that he knows or believes to have been improperly obtained; or
- (c) an identity document that relates to someone else.

(2) The requisite intention for the purposes of subsection (1) is-

- (a) the intention of using the document for establishing registrable facts about himself; or
- (b) the intention of allowing or inducing another to use it for establishing, ascertaining or verifying registrable facts about himself or about any other person (with the exception, in the case of a document within paragraph (c) of that subsection, of the individual to whom it relates).

(3) It is an offence for a person with the requisite intention to make, or to have in his possession or under his control-

- (a) any apparatus which, to his knowledge, is or has been specially designed or adapted for the making of false identity documents; or
- (b) any article or material which, to his knowledge, is or has been specially designed or adapted to be used in the making of false identity documents.

(4) The requisite intention for the purposes of subsection (3) is the intention-

- (a) that he or another will make a false identity document; and
- (b) that the document will be used by somebody for establishing, ascertaining or verifying registrable facts about a person.

(5) It is an offence for a person to have in his possession or under his control, without reasonable excuse-

- (a) an identity document that is false;
- (b) an identity document that was improperly obtained;
- (c) an identity document that relates to someone else; or
- (d) any apparatus, article or material which, to his knowledge, is or has been specially designed or adapted for the making of false identity documents or to be used in the making of such documents.

(6) A person guilty of an offence under subsection (1) or (3) shall be

liable, on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine, or to both.

(7) A person guilty of an offence under subsection (5) shall be liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;

(b) on summary conviction in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum, or to both;

(c) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

but, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in paragraph (b) to twelve months is to be read as a reference to six months.

(8) For the purposes of this section-

(a) an identity document is false only if it is false within the meaning of Part 1 of the Forgery and Counterfeiting Act 1981 (c. 45) (see section 9(1) of that Act); and

(b) an identity document was improperly obtained if false information was provided, in or in connection with the application for its issue or an application for its modification, to the person who issued it or (as the case may be) to a person entitled to modify it;

and references to the making of a false identity document include references to the modification of an identity document so that it becomes false.

(9) Subsection (8)(a) does not apply in the application of this section to Scotland.

(10) In this section "identity document" has the meaning given by section 26.

Theft (Amendment) Act, 1996 c. 62

Obtaining a money transfer by deception.

1. - (1) After section 15 of the Theft Act 1968 insert-

Obtaining a money transfer by deception.

15A. - (1) A person is guilty of an offence if by any deception he dishonestly obtains a money transfer for himself or another.

(2) A money transfer occurs when-

- (a) a debit is made to one account,
- (b) a credit is made to another, and
- (c) the credit results from the debit or the debit results from the credit.

(3) References to a credit and to a debit are to a credit of an amount of money and to a debit of an amount of money.

(4) It is immaterial (in particular)-

- (a) whether the amount credited is the same as the amount debited;
- (b) whether the money transfer is effected on presentment of a cheque or by another method;
- (c) whether any delay occurs in the process by which the money transfer is effected;
- (d) whether any intermediate credits or debits are made in the course of the money transfer;
- (e) whether either of the accounts is overdrawn before or after the money transfer is effected.

(5) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years.

Section 15A:
supplementary.

15B. - (1) The following provisions have effect for the interpretation of section 15A of this Act.

(2) 'Deception' has the same meaning as in section 15 of this Act.

(3) 'Account' means an account kept with-

- (a) a bank; or
- (b) a person carrying on a business which falls within subsection (4) below.

(4) A business falls within this subsection if-

- (a) in the course of the business money received by way of deposit is lent to others;

or

(b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit;

and 'deposit' here has the same meaning as in section 35 of the Banking Act 1987 (fraudulent inducement to make a deposit).

(5) For the purposes of subsection (4) above-

(a) all the activities which a person carries on by way of business shall be regarded as a single business carried on by him; and

(b) 'money' includes money expressed in a currency other than sterling or in the European currency unit (as defined in Council Regulation No. 3320/94/EC or any Community instrument replacing it)."

(2) Nothing in this section has effect in relation to anything done before the day on which this Act is passed.

Dishonestly retaining a wrongful credit.

2. - (1) After section 24 of the Theft Act 1968 insert-

“Dishonestly retaining a wrongful credit.

24A. - (1) A person is guilty of an offence if-

(a) a wrongful credit has been made to an account kept by him or in respect of which he has any right or interest;

(b) he knows or believes that the credit is wrongful; and

(c) he dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.

(2) References to a credit are to a credit of an amount of money.

(3) A credit to an account is wrongful if it is the credit side of a money transfer obtained contrary to section 15A of this Act.

(4) A credit to an account is also wrongful to the extent that it derives from-

- (a) theft;
- (b) an offence under section 15A of this Act;
- (c) blackmail; or
- (d) stolen goods.

(5) In determining whether a credit to an account is wrongful, it is immaterial (in particular) whether the account is overdrawn before or after the credit is made.

(6) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years.

(7) Subsection (8) below applies for purposes of provisions of this Act relating to stolen goods (including subsection (4) above).

(8) References to stolen goods include money which is dishonestly withdrawn from an account to which a wrongful credit has been made, but only to the extent that the money derives from the credit.

(9) In this section 'account' and 'money' shall be construed in accordance with section 15B of this Act."

(2) Nothing in this section has effect in relation to anything done before the day on which this Act is passed.