

# Identity theft reforms



Identity theft is a growing crime. People who use someone else's identity often take money from the victim's bank account or may make big purchases or take out loans in the victim's name. Sometimes the dollar impact per victim may not be that high, but the overall damage can be significant. This can include damage to the victim's credit rating, reputation, mental health or needing to take legal action.

## Identity theft has evolved

South Australia was the first state/territory to enact legislation to specifically address identity theft in 2003. Since then, the way that criminals use stolen or fake identities has changed significantly and reports of identity theft have increased greatly.

The latest [Targeting Scams report](#) by the Australian Competition and Consumer Commission (ACCC) shows that there were 837 reports of identity theft in SA in 2019. The report also states -

*Identity theft is becoming more common and it's estimated that, on average, victims spend 22 hours repairing the damage...The aftermath of such scams can be long lasting and cause financial devastation. On top of this is the ongoing stress experienced by victims. (Page 14, Targeting scams 2019: a review of scam activity since 2009)*

SA's identity theft legislation needs to be updated to ensure that more identity theft offences are captured, particularly those that involve electronic crime – e.g. 'card not present' fraud, skimming and pay wave fraud. The proposed changes aim to improve the effectiveness of identity theft legislation, and to better support victims to recover their identity and repair the damage done.

## Relevant laws

The State Government intends to amend the *Criminal Law Consolidation Act 1935* and make related amendments to the *Sentencing Act 2017* and *Criminal Procedure Act 1921*.

## Having another person's identity information

A new offence of identity theft would be created. It would be an offence to have another person's identity information without a reasonable excuse.

There would be some 'carve-outs' to allow for situations where it is legitimate to hold another person's identity information. For example:

- Government agencies, tax agents, accountants, health providers and financial institutions having personal ID details of their clients.
- A person having ID documents for their close relatives (e.g. spouse, partner or sibling).

The offence would exclude commonly available information – e.g. a person's name, address, date or place of birth or marital status.

The proposed maximum penalty is 2 years jail.

## Taking action against identity theft criminals

Under the current legislation it is difficult to investigate identity crime, identify the perpetrators, lay charges and secure a conviction. There is a very high threshold to prove criminal intent beyond reasonable doubt, which can be difficult for contemporary identity crime.

By changing the requirement to prove intent for a criminal purpose (instead of a 'serious' criminal purpose) it will be easier to prosecute offenders who use a false identity or misuse personal information.

## Identity theft certificates

Identity theft certificates are official documents issued by the court which victims of identity theft can present to organisations (e.g. banks) to help them repair any damage to their finances or credit rating. However, under the current law, a victim can only get this certificate once the offender has been convicted of the identity theft crime. There are many circumstances where it is difficult to locate the offender (e.g. they live overseas) or to take prosecution action.

It is proposed that the law be changed to allow a court to issue an identity theft certificate where there is sufficient evidence that a person has been a victim of identity theft, regardless of whether any criminal proceedings have been or will be taken in relation to the offence.

## Have your say

To have your say about the proposed changes to identity theft legislation:

- Join the online discussion at <https://yoursay.sa.gov.au/identity-theft-reforms>
- Respond to the survey at <https://yoursay.sa.gov.au/identity-theft-reforms>
- Send written feedback to Attorney-General's Department, Legislative Services, GPO Box 464, Adelaide, SA 5001 or via email to [LLPSubmissions@sa.gov.au](mailto:LLPSubmissions@sa.gov.au).

**Closing Date: 5pm Friday 26th February 2021**

