

South Australia

# **Statutes Amendment (Identity Theft) Bill 2021**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*, the *Criminal Procedure Act 1921* and the *Sentencing Act 2017*.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Statutes Amendment (Identity Theft) Act 2021*.

### **2—Commencement**

This Act comes into operation on a day to be fixed by proclamation.

### 3—Amendment provisions

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

## Part 2—Amendment of *Criminal Law Consolidation Act 1935*

### 4—Amendment of section 144A—Interpretation

- (1) Section 144A—before the definition of *criminal purpose* insert:

*close relative*—a person is a close relative of another if—

- (a) they are spouses or domestic partners; or
- (b) 1 is a parent or child of the other; or
- (c) 1 is a brother or sister of the other;

- (2) Section 144A—after the definition of *false identity* insert:

*on-line gambling product or service* means any product or service that enables people to place bets or otherwise engage in a gambling activity by telephone, internet or other electronic means;

- (3) Section 144A, definition of *personal identification information*, (a)(viii)—after "identification" insert:

(including, to avoid, doubt a personal identification number (PIN) or other password or passcode)

- (4) Section 144A, definition of *serious criminal offence*—delete the definition

### 5—Amendment of section 144B—False identity etc

Section 144B(3)—delete "serious" wherever occurring

### 6—Amendment of section 144C—Misuse of personal identification information

Section 144C(1)—delete "serious" wherever occurring

### 7—Amendment of section 144D—Prohibited material

Section 144D(1), (2) and (3), penalty provisions—delete "3 years" wherever occurring and substitute in each case:

5 years

### 8—Insertion of section 144DA

After section 144D insert:

#### 144DA—Possession of personal identification information

- (1) A person who, without reasonable excuse, has possession of personal identification information of another person (the *victim*) is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if—
- (a) the victim is a body corporate; or
  - (b) the personal identification information consists only of information of a kind referred to paragraph (a)(i) of the definition of that term in section 144A (and does not consist of any information of a kind referred to in any of the other subparagraphs in paragraph (a) of that definition);
- (3) If, in proceedings for an offence against subsection (1), the defendant establishes that—
- (a) in the ordinary course of a lawful occupation or activity undertaken by the defendant, the defendant has possession of personal information of other people generally or of a class of people to which the victim belongs; or
  - (b) the defendant and the victim are close relatives; or
  - (c) the defendant holds a power of attorney for the victim,
- then, despite section 5B, the prosecution will be required to prove that the defendant had possession of the relevant material without reasonable excuse.

**9—Amendment of section 144F—Application of Part**

Section 144(a)(i)—after "age of 18" insert:

(other than an on-line gambling product or service)

**Part 3—Amendment of *Criminal Procedure Act 1921***

**10—Insertion of Part 4 Division 6**

After section 83 insert:

**Division 6—Identity theft certificates**

**84—Certificate for identity theft victims**

- (1) The Magistrates Court may, on application by a person, issue them with a certificate under subsection (2) if satisfied, on the balance of probabilities, that the person is an identity theft victim.
- (2) A certificate issued to a person is to—
  - (a) identify the person; and
  - (b) give details of the manner in which the person's personal identification information was used to commit the offence (whether or not any person has been charged with, or found guilty of, the offence); and
  - (c) include any other matters considered by the Court to be relevant.

(3) The certificate is not admissible in any criminal proceedings in relation to the offence.

(4) In this section—

*identity theft victim* means a person whose identity has been assumed, or personal identification information has been used, without the person's consent, in connection with the commission of an offence;

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

## Part 4—Amendment of *Sentencing Act 2017*

### 11—Amendment of section 125—Certificate for identity theft victims

(1) Section 125(1)—delete "under subsection (2)" and substitute:

of a kind that may be issued under Part 4 Division 6 of the *Criminal Procedure Act 1921*

(2) Section 125(2)—delete subsection (2)