

23 February 2009

LAW AND JUSTICE LEGISLATION AMENDMENT (IDENTITY CRIMES AND OTHER MEASURES) BILL 2008

Second Reading

Mr BRADBURY (Lindsay) (1:46 PM)—I rise in support of the Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2008. I am very pleased to speak in support of this bill because I think it does go a significant way towards addressing some of the issues that have been raised in the course of this debate—indeed most of them. The issue of identity crime and identity fraud is a significant one; it has been growing, as many of the speakers have indicated. It is not necessarily a new type of offence that people are committing but the methods and the forms that are being used are taking on an increasingly new character. We see this in particular with the use of new technologies, in particular electronic technologies, in order to make the approaches towards identity theft even more sophisticated than that which we may have witnessed in the past.

I wish to speak specifically on the identity crime aspects of the bill. The bill creates three new offences by inserting those offences into the new part 9.5 of the Criminal Code Act 1995. It has been said before and I restate the fact that, with the exception of Queensland and South Australia, identity theft has not been prescribed as a specific offence. But, as a result of the recommendations by the final report into identity crime by the Model Criminal Law Officers Committee of the Standing Committee of Attorneys-General, in implementing those recommendations we will see that the Commonwealth—through this bill, when it becomes an act—will be implementing a number of those recommendations. There are some modifications to the recommendations provided but in the main we will be seeing the implementation of those recommendations.

Speakers before me in this debate have discussed the magnitude of identity theft and identity crime. Clearly it is difficult to put a figure on the cost to the community of that. Of course we can try and define in monetary terms the cost of identity theft and identity crime but, as some speakers who have contributed to this debate before me have also indicated, sometimes the loss or the cost that is felt by those who have been the victims of identity crime can be of a non-monetary nature. Indeed the hassle, the time, the energy, the effort and the stress that go into trying to remedy situations that one might have to confront as a result of being a victim of identity theft pose an additional set of hurdles for each and every one of us as we struggle to get through the complexity of our daily lives. I think what we see here, particularly with the emphasis on the victims' certificate, is some very practical means by which some relief can be provided to victims of identity theft.

I wish to begin by turning to the substantive provisions of this schedule of the bill. I will then move on

from there to have a discussion and to raise a few issues that I have confronted in my local community—issues that have been brought to my attention by local residents and have come my way and through the door of my electorate office. It is worth noting that, in the definitions provisions of the bill, the expression ‘identification information’, which is very much central to the operational provisions, is defined to include a name or an address; a date or place of birth; whether a person is married or has a de facto partner; relatives’ identity or similar information; a drivers licence or drivers licence number; a passport or passport number; biometric data; a voice print; a credit or debit card, its number or data stored or encrypted on it; a financial account number, username or password; a digital signature; a series of numbers or letters or both intended for use as a means of personal identification; and an ABN, or Australian business number.

In terms of the specific offences that are created under this bill, the three offences primarily can be described as the dealing offence, the possession of identification information offence, and the possession of equipment with the purpose of or a view towards the creation of identification documentation. Each of these provisions requires particular intent elements, and I think it is worth just reflecting on the operational elements of the offences.

The offences include, as I said, dealing in identification information with the intention of committing or facilitating the commission of a Commonwealth indictable offence, punishable by up to five years imprisonment. That is the dealing offence. I note that in the explanatory memorandum there is an example provided in relation to the dealing offence:

An example of this type of offence is: person A uses the identification information of a business, such as its trading name, ABN, address and financial account information to pass themselves off as the business or an authorised agent or employee of the business, with the intention of importing a tier 1 prohibited good—
that is the indictable offence element—To establish this offence, the prosecution will need to prove beyond reasonable doubt that:

a person made, supplied or used identification information, and the person intended that they, or any other person, will use that identification information to pretend to be, or pass themselves off as, another person for the purpose of committing, or facilitating the commission of, a Commonwealth indictable offence.

That is the dealing offence, and it goes very much to dealing in identification information. In relation to the possession of identification information offence, the EM provides the following:

An example of conduct that would be captured by this offence is:

person A possesses identification information about person B [a business], such as its trading name, ABN and financial account number person A intends that he or she, or another person, will use the identification information to engage in conduct, and the conduct is that person A will pass themselves off as person B for the purpose of committing, or facilitating the commission of, a Commonwealth indictable offence.

The third offence relates specifically to the possession of equipment for the purpose of producing or creating identification documentation. The EM states:

To establish this offence, the prosecution will need to prove beyond reasonable doubt that:

a person possesses equipment, the [first] person intended that they, or any other person, will use the equipment to make identification documentation, and the [first] person intends that they, or any other person, will use the identification documentation to engage in conduct prohibited under section 372.1.

Clearly, they are wide-ranging but, significantly and most importantly, the provisions seek to be framed in technology neutral language so as not only to capture the newly emergent technologies but also to take into account those technologies that have not yet reached the marketplace or those technologies that we have not yet seen in operation or that perhaps have not even been invented yet.

As I indicated earlier, the particular provisions relating to the victims certificate are, I think, of great significance because of the great hassle and difficulty that many victims face in trying to redress the situation when identity theft or identity crime has been committed. I want to share the experiences of some constituents of my electorate who have raised their situations with me. But, before I do so, I note that there was case in Victoria that was reported in the Herald Sun on Saturday, 15 November last year. The article was written by Ben Butler and was entitled 'A very personal theft'. I will quickly run through the elements of that scenario. I was horrified to see that this had occurred—though not nearly as horrified as the victim, I am sure.

David Stray, a Victorian man, received a letter in the mail one day in March 2006. That letter confirmed that a loan for \$360,000 had been secured against the house that he owned. That was news to him, as he had not applied for any such loan. The documentation was all there and signed and contained copies of all the supporting documentation that one would normally expect to form part of an application for a loan of that sort, including the title to his home. So, although he had not applied for this loan, he received in the mail confirmation of his application, enclosing the certificate of title to his home. I am sure that would be disturbing for anyone in that situation.

Initially, Mr Stray thought it was a practical joke but then soon realised that this was the work of fraud and contacted the police. More than two years down the track the offender in this case was finally brought to justice and was prosecuted under various fraud provisions. To that point, Mr Stray was not able to clear the debt that had been raised in his name. I think that is the most disturbing aspect of this story. It is an aspect that points to what I hope to be the effectiveness of the bill that is currently before the House—that is, to provide victims with some redress when they are confronting the aftermath of identity crime and its impact on their lives. In Mr Stray's case, the threats to recover the loan in question eventually ceased—but they only ceased as a result of the finance company heading into difficult financial circumstances. It was only when the finance company collapsed—with a \$20 million outstanding debt—that they ceased to pursue Mr Stray for a debt that clearly should not have been owing on his part as it was a debt that had arisen as a result of identity fraud.

Whilst there may be some argument that cases such as this can, to some extent, be covered within the existing provisions of the Criminal Code, particularly with respect to the fraud offences that exist, because of the rapid changes in technology, the pace at which technology has been changing, there is clearly a case—as the Standing Committee of Attorneys-General has recommended—to adopt this legislation, which will ensure that there are specific offences that go to the heart of identity crime and identity theft.

A couple of examples in my local community have been brought to my attention—in particular, a Facebook scam in relation to identity theft. This is a new scam targeting users of Facebook. The scammer sends an email to the friends of the victim—the identities of the friends having been ascertained by virtue of the Facebook site—indicating that the person in question is isolated in a foreign country and requires urgent assistance in the form of a cash donation, and they request that cash be wired across to them. I know of at least one individual who fell victim to this scam, and they did so because the email setting out the details of the request specifically referred to friends of the individual in question whose identity had been assumed. In that case, the person did wire the money and found themselves without any legal recourse.

The SPEAKER —Order! It being 2 pm, the debate is interrupted in accordance with standing order 97. The debate may be resumed at a later hour and the member will have leave to continue speaking when the debate is resumed.

Mr BRADBURY (Lindsay) (5:29 PM) —I rise to continue my contribution to this debate on the Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2008, a debate which was interrupted by question time. Prior to question time I was commenting on a Facebook scam that I had become aware of. One of my staff members drew to my attention the fact that someone in the gallery had contacted my office shortly after my earlier contribution just to confirm that they too had been the subject of a similar type of scam. So it is something that is reasonably widespread and something that users of Facebook should be aware of.

I simply reiterate my support for the measures in this bill, which go to addressing this growing problem of identity theft throughout the community. Continuing on with some of the local examples of identity theft I have witnessed, those examples that have been brought to me and my electorate office, I also had another instance that involved a credit card matter. In this particular case the resident who came to see me estimated that they would have had approximately \$1,400 available in their bank account as their balance. The victim checked their account through the internet using their internet banking and realised that their account had exceeded its limit. However, the details of the transactions had not yet been made available. They contacted the bank directly to seek further information. It was then pointed out to them by the bank that there were two transactions, one of \$700 and the other of \$750. The particular resident knew nothing about these transactions. As a result of her quick action, the bank was able to act in regard to these transactions. It resulted in there not being any loss of money for her. However, if she had not contacted the bank so promptly then it would have been much harder to prove that the transactions were fraudulent. This is yet another case where electronic technology, the internet in particular, has been used and someone's identity has been assumed by someone else taking advantage of that technology to that person's detriment.

Before I conclude, I want to make a few observations. At the local shopping centre where I shop, recently there has been a new practice develop when you use a credit card. Previously I always had to sign for the credit card but now they seem very intent on encouraging you to use a PIN. I must say there were plenty of occasions when I used my credit card and signed and, frankly, did not think that the shop attendant looked at my card to confirm whether or not the signature resembled the one that I had just penned. That does not serve to reflect poorly on shop attendants. Having worked as a casual shop attendant for some seven years, I have got much sympathy about the demands on those in those roles. But it does in my mind reinforce the need for having stringent controls and offences available to ensure that, in regard to those individuals who do seek to assume the identity of others to engage in identity theft or identity fraud, there should be adequate remedies available. It is not just about ensuring that those who transgress are able to be brought to justice but about ensuring that there are options available to the victims to make sure that they, who generally have not been at fault, should have avenues available to them to quickly rectify the record and make sure that they are not disadvantaged any further.

My final observation is that, talking to a local retailer in my community, he was advising me that there has been a growth in demand for shredders at his particular shop. He believes, and I can only suggest that his opinion seems to be borne out by other anecdotal evidence that I have been able to procure, that this is because of the growing prominence of identity theft and that more and more families and households are becoming aware of the need to take greater care with disposing of documents that might disclose information of a private and confidential nature, information that ultimately would allow others, if it got into their hands, to use that information to assume the identity or to steal the identity of those people. I think that is a good thing. While this bill is clearly an important part of the overall mix, we should not underestimate the significance of ensuring that there is adequate education in this regard, to make sure

that people do take necessary steps to protect the confidentiality of their material and to ensure that they are not, through their own carelessness, handing over material that makes the job of those wanting to steal their identity that much easier.

I think it is a great bill, one worthy of this parliament's support, and I am very pleased to be speaking in support of it.