

Criminal Code And Civil Liability Amendment Bill 2007

Explanatory Notes

Objectives of the Bill

The Bill seeks to:

- Amend section 328A of the Criminal Code to increase the maximum penalties for the offence of dangerous operation of a vehicle causing death or grievous bodily harm and to expand the existing aggravating circumstances generally to include: travelling at excessive speed; racing or speed trialling; and leaving the scene of the offence;
- Amend the Criminal Code by the insertion of a new offence of identity fraud which prohibits a person from misusing another entity's identification information; and
- Amend the *Civil Liability Act 2003* to exclude the application of the Act to all work injuries for which compensation is payable under Queensland's workers compensation legislation, apart from recess and journey claims, regardless of whether the injury is caused by an employer or a third party.

Reasons for the Bill

Criminal Code

Section 328A

The Bill addresses growing community concern about dangerous driving offences, particularly where death or serious injury results and alcohol, drugs or speed are contributing factors. There has also been increasing community concern about the incidence of hit-and-run traffic offences that result in death or serious injury.

Obtaining or dealing with identification information

Technological advances in the use of information technology have seen a corresponding growth in the crimes committed through the use of that technology. Many of these crimes, including fraud and theft, are

perpetrated through the use of false personal identification information. The most notorious of these new offences is the practise of credit card “skimming” where personal financial details are obtained through a variety of methods including the use of electronic devices fitted to banks’ automatic teller machines, and then used to effect financial transactions (often overseas) that result in individuals, financial institutions, insurers and ultimately the community losing significant sums of money.

The issue of credit card skimming has been under the consideration of the Standing Committee of Attorneys-General (SCAG) since April 2003, when Ministers tasked the Model Criminal Code Officer’s Committee (MCCOC) with the development of model offences. The MCCOC Final Credit Card Skimming Report was released in April 2006.

Credit card skimming is a specific example of the wider problem of identity theft/fraud, for example, the use of identification documentation to personate others. Such conduct can leave victims with a lost financial, social or legal reputation that is difficult to recover. MCCOC acknowledged that credit card skimming could be criminalised through a wider identity theft offence.

There are a number of existing offences in the Criminal Code that are relevant to the theft or misuse of personal identifying information (including financial information). These offences include stealing, fraud, forgery, uttering, computer hacking and misuse, and personation. However, a potential gap exists where a person possesses, obtains or supplies another person’s personal identifying information with the intention of it being used for a criminal purpose, but without then committing a substantive offence, for example, where identity information is obtained in Queensland with the intention that it be used to commit a fraud outside the jurisdiction.

Civil Liability Act

The *Civil Liability Act 2003* was introduced as part of the Government’s broader personal injury law reform agenda with the aim of placing downward pressure on insurance premiums. The *Civil Liability Act 2003* caps general damages at \$250,000 and places restrictions on the recovery of some special damages, notably a cap on compensation for lost income at three times average weekly earnings, limits on the calculation of superannuation and a threshold before compensation for gratuitous services can be recovered. Section 5 of the *Civil Liability Act 2003* was inserted to exclude work related injuries from the application of the Act.

The amendment to the *Civil Liability Act 2003* aims to redress the effect of the Queensland Court of Appeal decision in *Newberry v Suncorp Metway Insurance Limited* [2006] QCA 48 (*Newberry*), which was handed down on 3 March 2006. In *Newberry*, although the claimant was injured in a motor vehicle accident while at work, the damages were assessed under the *Civil Liability Act 2003* because his claim was against a third party (the driver of the other vehicle) and his employment was not a material ingredient to the claim against the third party.

The intention of the amendment is to protect workers' rights by providing that a common law claim for damages by a worker in factual situations such as those in *Newberry*, will be assessed at common law, rather than under the *Civil Liability Act 2003*. The amendment will reinstate the Government's stated intention regarding the protection of worker's rights under the *Civil Liability Act 2003*.

Achievement of the Objectives

The Bill amends section 328A to increase the maximum penalty for the offence of dangerous operation of a motor vehicle causing death or grievous bodily harm and expands the aggravating circumstances for the offence generally.

The Bill amends the Criminal Code by the insertion of new section 408D, Obtaining or dealing with identification information. The provision applies to a person who obtains or deals with another entity's identification information for the purpose of committing, or facilitating the commission of, an indictable offence. The proposed provision is not limited to an offence relating to credit card skimming as there are wider offences committed over and above the fraudulent use of credit card details. Further, the provision has been broadly drafted, to ensure it does not quickly become obsolete with the development of technology.

The Bill amends section 5 of the *Civil Liability Act 2003* so that the Act will not apply in relation to any work injuries, apart from recess and journey claims, whether or not the injured worker claims against their employer, a host employer or a third party.

Estimated Cost for Government Implementation

Any costs in relation to the amendments to the Criminal Code will be met within existing resources. There will be no implementation costs for Government in relation to the amendment to the *Civil Liability Act 2003*.

Consistency with Fundamental Legislative Principles

The amendment to the *Civil Liability Act 2003* will commence retrospectively in relation to a personal injury, or part of a personal injury, caused on or after 6 November 2006. The Bill is drafted so that, in relation to injuries occurring after that date, the rights of parties to proceedings that have been progressed to trial or decided, or where a settlement agreement has been reached, are unaffected.

Retrospective laws are generally passed to validate past actions, correct defects in legislation or confer benefits retrospectively. As the Bill aims to redress the *Newberry* decision and reinstate the Government's original intention regarding the protection of workers' rights under the *Civil Liability Act 2003*, it is considered that this degree of retrospectivity is justified.

Consultation

Consultation on the proposed amendments to the Criminal Code was undertaken with: the Chief Justice of the Supreme Court, the Chief Judge of the District Court, the Chief Magistrate, Legal Aid Queensland, the Director of Public Prosecutions, the Queensland Police Service, the Department of Communities, the Department of the Premier and Cabinet, Queensland Transport, the Department of Tourism, Fair Trading and Wine Industry Development, the Australian Finance Conference and Abacus – Australian Mutuals.

Government departments and agencies including; the Department of Employment and Industrial Relations, the Motor Accident Insurance Commission, Queensland Treasury and the Department of Premier and Cabinet have all been consulted on the policy objectives and on the drafting of the provisions. No community consultation has been undertaken in relation to the amendment to the *Civil Liability Act 2003*, but views of major stakeholders are well known.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides that the Act's short title is the Criminal Code and Civil Liability Amendment Bill 2007.

Commencement

Clause 2 provides that part 3 commences on 6 November 2006. The remainder of the Bill commences on assent.

Part 2 Amendment of Criminal Code

Code amended in pt 2

Clause 3 provides that this part amends the Criminal Code.

Amendment of s 328A (Dangerous operation of a vehicle)

Clause 4 amends section 328A to expand the circumstances of aggravation and increase the maximum penalty for dangerous driving causing death or grievous bodily harm.

Subclause (1) renumbers section 328A (2)(b) as section 328A(2)(c).

Subclause (2) inserts a new section 328A (2)(b) which provides that an offender is liable to a maximum penalty of five (5) years imprisonment if he or she operates a vehicle dangerously and at the time is excessively speeding (40 km/h over the prescribed speed limit) or taking part in an unlawful race or speed trial. Thus, although the manner of driving and the speed of driving have always been two essential matters of fact for the jury to have regard to in a case of dangerous driving, if the prosecution can prove, to the requisite standard, that the offence involved speeding at 40

km/h or more over the prescribed speed limit, then the offender is liable to the higher penalty.

Subclause (3) inserts a new section 328A (4). The amendment increases from seven (7) years to 10 years, the maximum penalty for dangerous driving causing death or grievous bodily harm. Further, it omits the distinction in penalty based on the level of intoxication and provides that an offender is liable to 14 years imprisonment if, at the time of the offence, the offender:

- is adversely affected by an intoxicating substance; or
- is excessively speeding; or
- is taking part in an unlawful race or unlawful speed trial; or
- knows or ought reasonably know, the other person has been killed or injured, and leaves the scene before a police officer arrives (other than to obtain medical or other help for the injured person).

Although new section 328A (4) does not provide for a distinction in penalty based on the level of intoxication, the amount of alcohol remains relevant as a circumstance to consider when determining whether the driving was in fact dangerous. Further, the level of intoxication is relevant because under section 80(24A) of the Transport Operation (Road Use Management) Act 1995 (TORUM), a blood alcohol reading over 0.15% is conclusive evidence on a charge under section 328A of the Code that a person was adversely affected by alcohol. For a lower concentration of alcohol or for any other intoxicating substance, the fact of being adversely affected must be proved.

Subclause (5) defines the terms ‘excessively speeding’, ‘unlawful race’ and ‘unlawful speed trial’. The existing definition of ‘place’ is omitted and replaced with a new definition which clarifies that ‘place’ does not include a place being lawfully used to race or test vehicles.

Section 85 of TORUM provides the summary offences of participating in an unlawful race or speed trial. Given that the act to be relied on to prove the summary offence is the same act to be relied on to prove the circumstance of aggravation of the dangerous driving offence, it is intended that section 16 of the Criminal Code would apply to prevent a sentencing court taking into account the circumstance of aggravation and the application of the higher maximum penalty if the person had been convicted and punished for the summary offence. Section 16 would equally apply if an offender is convicted and punished for the dangerous drive with

the relevant circumstance of aggravation and an attempt is made to punish the offender under the summary charge.

Amendment of s 408D (Computer hacking and misuse)

Clause 5 renumbers section 408D and section 408E.

Insertion of new section 408D

Clause 6 creates the new offence of obtaining or dealing with identification information.

The offence applies to a person who obtains (includes possess or makes) or deals (includes supplies or uses) with another entity's (whether alive, dead or fictitious) identification information for the purpose of committing, or facilitating the commission of, an indictable offence. Pursuant to section 36 of the *Acts Interpretation Act 1954* and its definition of 'indictable offence', the offence extends to the situation where a person misuses the identification information for the purpose of facilitating the commission of an offence outside of Queensland that would be an indictable offence if it were committed in Queensland.

Subsection (7) provides a broad definition of 'identification information' to ensure the offence does not quickly become obsolete with the development of technology.

Pursuant to subsections (3) to (6), a sentencing court may issue a certificate to the other entity (that is, the entity whose identification information was used) stating the offence, the entity's name and anything else the court considers relevant for the entity's benefit. This will assist a victim of such an offence to begin to repair damage to their reputation (example, credit rating).

Part 3 Amendment of Civil Liability Act 2003

Act amended in part 3

Clause 7 provides that part 3 amends the Civil Liability Act 2003.

Amendment of s 5 (Civil liability excluded from Act)

Clause 8 amends section 5 of the *Civil Liability Act 2003* so that the Act will not apply to a decision about liability or awards of damages for personal injury if the harm resulting from the breach of duty is or includes an injury for which compensation is payable under the *Workers Compensation and Rehabilitation Act 2003* or the repealed *WorkCover Queensland Act 1996*, apart from injuries pursuant to ss.34(1)(c) and 35 of the *Workers Compensation and Rehabilitation Act 2003* and ss.36(1)(c) and 37 of the repealed *WorkCover Queensland Act 1996*.

Subclause (3) inserts three new subsections into section 5 of the *Civil Liability Act 2003*.

The new subsection (2) clarifies that for the purpose of s.5(1), as renumbered, it is immaterial whether compensation for an injury is actually claimed under the relevant Workers' Compensation Act or whether entitlement to seek damages is regulated by that Act.

The new subsection (3) provides that to remove any doubt, it is declared that a breach of duty mentioned in s.5(1), as renumbered, includes a breach of duty giving rise to a dependency claim. "Dependency claim" is defined in schedule 2 of the *Civil Liability Act 2003*.

The new subsection (4) clarifies that compensation under a relevant Workers' Compensation Act includes the payment of medical expenses for medical treatment or attendance, and funeral expenses. The subsection also provides a definition of "relevant Workers' Compensation Act".

Insertion of new ch 5, pt 5

Clause 9 inserts a new part 5 (Transitional provisions for Criminal Code and Civil Liability Act 2007) into the *Civil Liability Act 2003*, comprising of section 83 (Personal injury to which the amendment s.5 extends as a result of amendment).

Subsection (1) of the new section 83 declares that the amended section 5 has effect to disapply the *Civil Liability Act 2003* to a decision, under section 5, in relation to personal injury only if the personal injury, or any part of it, is or was caused on or after 6 November 2006.

Subsection (2) ensures that the amended section 5 will not apply to a decision in relation to a personal injury, under section 5, if before the date of assent of the amending Act, the parties have entered into a settlement agreement in relation to damages, a trial in relation to the personal injury

has started but final relief has not been granted by the court or final relief in relation to the personal injury has been granted by a court.

Subsection (3) provides that section 5, as in force before 6 November 2006, continues to apply in relation to a decision mentioned in subsection (2).

Subsection (4) defines "amending Act" and "final relief".

This will ensure that the Act will not apply to the assessment of liability or damages in relation to a personal injury provided any part of the injury is caused after the date of introduction.