

Mr Greg Byrne  
Director  
Criminal Law Justice Statement  
Department of Justice  
121 Exhibition Street  
Melbourne VIC 3000

Reg No: A0026497L  
Phone: (03) 9670 6422  
Fax: (03) 9670 6433  
GPO BOX 3161  
Melbourne Victoria 3001  
email: info@libertyvictoria.org.au  
website: www.libertyvictoria.org.au

22 January 2009

Dear Greg Byrne,

**Re: Crimes Amendment (Identity Crime) Bill 2008**

Thank you for the opportunity to comment on the above Bill. Due to a lack of time and resources, Liberty's comments are necessarily brief and may not canvas all the civil liberties issues. However, we hope the following is of some assistance.

**Proposed Offences**

In general, Liberty supports the coordination and harmonisation of legislation in Australia's various jurisdictions. In response to your query, Liberty agrees with the MCLOC recommendation for a victim certificate whereby victims of identity crime may obtain a court or tribunal issued certificate vindicating them of the wrongdoing alleged.

Although Liberty supports legislative measures to prevent identity crime, care must be taken to ensure any measures are not overly privacy invasive and do not criminalise the use of pseudonyms or other legitimately anonymous transactions. Moreover, the presumption of innocence should not be reversed due to the mere possession of identification information, documentation or equipment for making such; any proposed offences must retain a *mens rea* element.

The extension of 'identification information' to include fictitious information is consistent with the objectives of the Bill although it appears that there is potential for a person who creates (makes) a fictitious name would be guilty of two offences under sections 192B (making identification information) and 192C (possessing identification information).<sup>1</sup> From a policy perspective, the greater criminality lies with the misuse of another's identity rather than the creation of a fictitious one.

**Victim Certificates**

Liberty strongly supports the creation and use of victim certificates. Anecdotally, victims of identity crime have found government departments and agencies extremely difficult to deal

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<sup>1</sup> By default, the person who possesses fictitious identification information with intent to misuse is guilty of both.

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with.<sup>2</sup> The ability to obtain a certificate even where there is no prosecution is essential. However, the draft Bill provides that where there is a prosecution, the certificate may only be issued at the completion of the proceeding. Since a prosecution may take months or even years, victims are actually disadvantaged by a prosecution in this respect. Instead, Liberty recommends that victims be able to obtain a certificate regardless of whether there is a prosecution or not (and regardless of outcome).

Although beyond the scope of the Bill, Liberty recommends that the administrative cost (i.e. application fee) for victim certificates be kept as low as possible; including appeals to the County Court.

One foreseeable outcome of victim certificates is a requirement by relevant organisations (particularly financial institutions) that victims obtain a victim certificate before that organisation will provide the victim with any redress. Ultimately this may complicate and increase the cost to the victim in clearing his or her name than is currently the case – not to mention increasing the courts workload. This is a problematic area since victim certificates offer clear benefits, but are likely to become an administrative burden on victims and courts alike.

Although in most cases it would not be necessary to compel an organisation to restore a victim's status, it is recommended that the courts retain the discretion to make a certificate enforceable against a specified organisation. It is envisaged that an organisation would only be compelled where that organisation has previously refused or otherwise indicated that it will not restore a victim's status despite a victim certificate. In such cases, the organisation involved would be able to apply to the court to vary or revoke the certificate.

Indeed, courts should be able to revoke or vary a certificate in a variety of circumstances; on its own motion or where an affected party makes application (e.g. victim, DPP, police, organisation, etc). In each case, the appropriate test for the court is where it is satisfied in all the circumstances that it would be appropriate to do so.

Liberty agrees that the certificate should not name the offender (where known) as the sole purpose of the certificate is to restore the victim's status with the relevant organisation(s) or within the community.

Although there is a risk that the victim certificate itself could be used fraudulently, this is an inherent risk in any document. The benefit to victims offered by such a document far outweighs the lesser risk of misuse (which would constitute an offence under the proposed provisions).

Please do not hesitate to contact Liberty Victoria should you wish to discuss the Bill further.

Kind regards,



**Georgia King-Siem**

Vice-President  
Liberty Victoria

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<sup>2</sup> In one instance, VicRoads had issued a licence based on fake identification documentation. Once notified of the identity theft, VicRoads then refused to provide any further information to the victim as the fake licence related to a (fictitious) person other than the victim.