

1990

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (AMENDMENT) BILL (No. 3) 1990**

**EXPLANATORY MEMORANDUM**

(Circulated by the authority of  
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Attorney-General)

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OUTLINE

Computers are a pervasive feature of today's society. Not only do computers store a lot of information, much of it personal or confidential, but also they are increasingly being used in operational roles. For example, computers now administer banking and other financial transactions, automatically calculate and issue salary cheques, control airline bookings and issue tickets.

Compared with paper records, computer records are peculiarly vulnerable to unauthorised intrusion. Paper records can be secured by lock and key. Any failure in security is usually the result of someone having committed an offence or having breached a duty. But with computer records, an unauthorised person can often gain access simply through ingenuity in overcoming technical barriers. A computer's vulnerability is not limited to unauthorised access: computer information can be damaged, destroyed or altered by sources within or outside the user organisation.

Traditional property offences do not adequately deal with computer age technology. The Bill addresses that deficiency by amending the Crimes Act 1900 (NSW) in its application in the Territory to create two new offences which are specifically directed at computer security. One prohibits unlawful access to data in a computer and the other, which addresses conduct with more serious potential consequences, makes it an offence to damage data in a computer. Both carry possible gaol sentences.

**FINANCIAL CONSIDERATIONS**

The Bill has no direct revenue or expenditure implications.  
The new offences will be enforced using existing police resources.

## **CLAUSE NOTES**

### **Clause 1: Short title**

Clause 1 is a formal provision which cites the Act as the Crimes (Amendment) Act (No. 3) 1990.

### **Clause 2: The Crimes Act**

Clause 2 defines the term "the Crimes Act" as the Crimes Act 1900 (NSW) in its application in the Territory.

### **Clause 3: Commencement**

Clause 3 specifies that the substantive provisions of the Act are to come into effect on a day which the Attorney-General fixes by a notice in the Gazette. In default of a commencement notice, subclause 2(3) provides that any uncommenced provisions of the Act come into effect automatically six months from the date of notification by the Chief Minister.

### **Clause 4: Insertion**

This clause amends the Act to insert in Part IV new Division 5, comprising sections 152 to 154.

#### **Proposed section 152: Interpretation**

Proposed section 152 defines "data" for the purposes of the proposed Division.

#### **Proposed section 153: Unlawful access to data in a computer**

Proposed section 153 prohibits a person from intentionally gaining access to data on a computer without lawful authority or excuse. The maximum penalty

is two years imprisonment, or, at the discretion of the court, an appropriate fine in accordance with section 431 of the Act.

**Proposed section 154: Damaging data in computers**

This proposed section creates the offence of unlawfully destroying, erasing or altering data stored in a computer or unlawfully inserting data into a computer. The provision also makes it an offence to interfere with, obstruct or interrupt the lawful use of, a computer. Unlike the offence in clause 153, the mental element of this offence includes recklessness as well as intention, but excludes the person who might cause damage by accident. The maximum penalty is imprisonment for 10 years or, at the discretion of the court, an additional or alternative fine in accordance with section 431 of the Act.