

Serial 1
Criminal Code Amendment Bill (No. 3) 2001
Dr Toyne

**A BILL
for
AN ACT**

to amend the Criminal Code

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NORTHERN TERRITORY OF AUSTRALIA
CRIMINAL CODE AMENDMENT ACT (NO. 3) 2001

No. of 2001

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2001

AN ACT

to amend the Criminal Code

[Assented to 2001]
[Second reading 2001]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Criminal Code Amendment Act (No. 3) 2001*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Definitions

Section 1 of the Criminal Code is amended –

- (a) by omitting the definitions of "data processing material" and "data processing response";
- (b) by omitting the definition of "deception" and substituting the following:
 - " 'deception' –
 - (a) means intentional deception by word or conduct as to fact or law and includes a deception as to the present intention of the person using the deception or another person; and

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- (b) includes an act or thing done or omitted to be done with the intention of causing –
 - (i) a computer system; or
 - (ii) a machine that is designed to operate by means of payment or identification,to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make;"; and
- (c) by omitting the definition of "document" and substituting the following:

" 'document' includes –

 - (a) any of, or part of any of, the following things:
 - (i) paper or other material on which there is writing;
 - (ii) a book, map, plan, drawing or photograph;
 - (iii) paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (iv) an article or any material from which sounds, images or writings are capable of being reproduced with or without the aid of another article or device;
 - (v) an article on which information has been stored or recorded, whether by mechanical or electronic means;
 - (vi) any other record or information; and
 - (b) a copy, reproduction or duplicate of such a thing or a part of such a copy, reproduction or duplicate;"; and
- (d) by omitting the definition of "writing" and substituting the following:

" 'writing' includes –

 - (a) a seal, mark and sign that is capable of conveying meaning; and
 - (b) data held in electronic form that is capable of being transformed into a document;".

4. Unlawful stalking

Section 189 of the Criminal Code is amended by omitting subsection (1) and substituting the following:

"(1) A person ('the offender') stalks another person ('the victim') if the offender engages in conduct that includes repeated instances of or a combination of any of the following:

- (a) following the victim or any other person;
- (b) telephoning, sending electronic messages to, or otherwise contacting, the victim or another person;
- (c) entering or loitering outside or near the victim's or another person's place of residence or of business or any other place frequented by the victim or the other person;
- (d) interfering with property in the victim's or another person's possession (whether or not the offender has an interest in the property);
- (e) giving offensive material to the victim or another person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;
- (f) keeping the victim or another person under surveillance;
- (g) acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of another person,

with the intention of causing physical or mental harm to the victim or of arousing apprehension or fear in the victim for his or her own safety or that of another person and the course of conduct engaged in actually did have that result.

"(1A) For the purposes of this section, an offender has the intention to cause physical or mental harm to the victim or to arouse apprehension or fear in the victim for his or her own safety or that of another person if the offender knows, or in the particular circumstances a reasonable person would have been aware, that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear."

5. Criminal deception

Section 227 of the Criminal Code is amended by omitting subsection (1) and substituting the following:

"(1) Any person who by any deception –

- (a) obtains the property of another; or
- (b) obtains a benefit (whether for himself or herself or for another),

is guilty of a crime and is liable to the same punishment as if he or she had stolen the property or property of equivalent value to the benefit fraudulently obtained (as the case may be).

"(1A) In subsection (1), 'benefit' includes any advantage, right or entitlement."

6. Repeal and substitution

Division 10 of Part VII of the Criminal Code is repealed and the following substituted:

"Division 10 – Computer offences

"276. Interpretation

"(1) In this Division, unless the contrary intention appears –

'computer' includes –

- (a) a single computer, whether or not connected to a network or communications system; and
- (b) more than one computer forming or connected to a network or communications system;

'data' includes –

- (a) information in any form; and
- (b) any program or part of a program;

'data held in a computer' includes –

- (a) data entered or copied into the computer;
- (b) data held in any removable data storage device that may be used in, or attached to, the computer; and
- (c) data held in a data storage device on a computer network of which the computer forms part;

'data storage device' means any thing containing or designed to contain data that may be used in a computer and includes –

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- (a) a device that may be used to gain access to, or perform a function on, a communications system or telecommunications network; and
- (b) an internet web site;

'electronic communication' means a communication of information in any form by means of guided or unguided electrical or electromagnetic energy;

'telecommunications network' means a system or series of systems for carrying electronic communications.

"(2) For the purposes of an offence under this Division, a person accesses data or causes modification of data or impairment of electronic communication if the person's conduct substantially contributes to the access, modification or impairment.

"276A. Meaning of access to data, modification of data and impairment of electronic communication

"In this Division –

- (a) access to data held in a computer means –
 - (i) the display of the data by the computer or any other output of the data from the computer;
 - (ii) the recording or monitoring of the data by a remote computer or other device;
 - (iii) the copying or moving of the data to any other place in the computer or to a data storage device; or
 - (iv) if the data is a program – the execution of the program;
- (b) modification of data held in a computer means –
 - (i) the alteration or removal of the data; or
 - (ii) an addition to the data;
- (c) impairment of electronic communication to or from a computer includes –
 - (i) the prevention of any such communication; or
 - (ii) the impairment of any such communication on an electronic link or network used by the computer,

but only if the prevention or impairment is caused (whether directly or indirectly) by the execution of a function of a computer; and

- (d) use of data includes –
 - (i) use by a third party; and
 - (ii) use at the time the data was accessed or at a later time.

"276B. Unlawful access to data

"(1) A person who unlawfully accesses data held in a computer with intent to –

- (a) cause loss or harm to the person entitled to the data or a third person; or
- (b) gain a benefit or advantage, whether personally or for a third party,

is guilty of a crime and is liable to imprisonment for 10 years.

"(2) A person who unlawfully uses data that has been accessed unlawfully, whether or not he or she is the person who gained the access to the data, is guilty of a crime and is liable to imprisonment for 10 years.

"276C. Unlawful modification of data

"(1) A person –

- (a) who unlawfully causes any modification of data held in a computer; and
- (b) who intends by the modification to impede access to, or to adversely affect the reliability, security or operation of, data held in a computer,

is guilty of a crime and is liable to imprisonment for 10 years.

"(2) A person causes modification of data held in a computer if the person sets in train a course of events that results in the modification, even if the person did not himself or herself access the particular computer in which the data is modified but the modification would not have occurred but for the person's action."

"276D. Unlawful impairment of electronic communication

"A person –

- (a) who unlawfully causes impairment of electronic communication to or from a computer; and

- (b) who intends to impair electronic communication to or from the computer or any other computer,

is guilty of a crime and is liable to imprisonment for 10 years.

"276E. Unlawful appropriation of access time

"(1) A person who unlawfully uses access time to a computer or telecommunications network, the access being charged to another person, is guilty of a crime and is liable to imprisonment for 3 years.

"(2) A person who unlawfully makes available for use by another person access time to a computer or telecommunications network, the access being charged to a third person, is guilty of a crime and is liable to imprisonment for 3 years."

"276F. Territorial nexus for offences

"A person is guilty of a crime under this Division –

- (a) if the person does an unlawful act within the Territory that leads to the unlawful access to, or modification of, data held in a computer or impairment of electronic communication, irrespective of whether or not the affected computer or data storage device is in the Territory; or
- (b) if the person does an unlawful act, whether within the Territory or not, that leads to the unlawful access to, or modification of, data held in a computer or impairment of electronic communication, where the affected computer or data storage device is in the Territory."
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