

## Forgery: s 488

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### Legislation

#### 488 Forgery and uttering

(1) A person who, with intent to defraud—

- (a) forges a document; or
- (b) utters a forged document;

commits a crime.

Maximum penalty—

- (a) if the document is a valuable security, insurance policy, testamentary instrument (whether the testator is living or dead) or registration document or is evidence of an interest in land—14 years imprisonment; or
  - (b) if the document is a power of attorney, contract or document kept or issued by lawful authority other than a document mentioned in paragraph (a)—7 years imprisonment; or
  - (c) otherwise—3 years imprisonment.
- (2) Subsection (1) applies whether or not the document is complete and even though it is not, or does not purport to be, binding in law.
- (3) In this section—

**registration document** means a document kept or issued by the registrar under the *Births, Deaths and Marriages Registration Act 2003* or an equivalent document kept or issued under a law of another jurisdiction, inside or outside Australia.

### Commentary

#### *Meaning of 'forge'*

The definition of 'forge' in s 1 and forgery in s 488 was changed by the 1997 amendments. The 1997 amendments have included the element of an intent to defraud. For offences occurring prior to 1 July 1997, refer to repealed s 488.

#### *Intention*

The forgery must have been done with intent to defraud.

'Intent to defraud' means an intent to practise a fraud on another person, it being sufficient if anyone may be prejudiced by the fraud. If, therefore, there is an intention to deprive another person of a right or to cause him or her to act in any way to his or her detriment or prejudice or contrary to what would otherwise be his or her duty, an intent to defraud is established notwithstanding that there is no intention to cause pecuniary or economic loss: *Welham v DPP* [1961] AC 103; [1960] 1 All ER 805.

An intent to defraud and an intent to deceive are distinguishable: *Tan v The Queen* [1979] WAR 149. See *R v Birt* (1899) 63 JP 328 and cf *Re London and Globe Finance Corp* [1903] 1 Ch 728 where the difference is explained by Buckley J:

To deceive is, I apprehend, to induce a [person] to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit: it is deceit to induce a [person] to act to [his or her] injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action.

## Suggested Direction

**The prosecution must prove that:**

**1. The defendant forged a document.**

**The word 'forge' is defined in s 1. To forge a document means to make, alter or deal with the document so that the whole of it or a material part of it –**

- (a) purports to be what, or of an effect that, in fact it is not; or**
- (b) purports to be made, altered or dealt with by a person who did not make, alter or deal with it or by or for some person who does not, in fact exist; or**
- (c) purports to be made, altered or dealt with by authority of a person who did not give that authority; or**
- (d) otherwise purports to be made, altered or dealt with in circumstances in which it was not made, altered or dealt with.**

**The word 'document' is defined in s 1. It includes –**

- (a) anything on which there is writing; and**
- (b) anything on which there are marks, figures, symbols, codes, perforations or anything else having a meaning for a person qualified to interpret them; and**
- (c) a record.**

**The word 'record' is also further defined in s 1.**

**It does not matter whether the document is complete or if the document is not, or does not purport to be, binding in law.**

**2. The forgery must have been done with intent to defraud.**

**'Intent to defraud' means an intent to practise a fraud on another person, it being sufficient if anyone may be prejudiced by the fraud. If, therefore, there is an intention to deprive another person of a right or to cause him or her to act in any way to his or her detriment or prejudice or contrary to what would otherwise be his or her duty, an intent to defraud is established notwithstanding that there is no intention to cause pecuniary or economic loss.**

**It is not necessary to prove an intent to defraud any particular person.**