

CENSORSHIP AMENDMENT BILL 2005

Introduction and First Reading

Bill introduced, on motion by **Mr J.B. D'Orazio (Minister for Justice)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR J.B. D'ORAZIO (Ballajura - Minister for Justice) [1.23 pm]: I move -

That the bill be now read a second time.

The Western Australian Censorship Amendment Act 2003, which came into effect on 1 July 2003, made Western Australia a full participant in the national classification scheme. Western Australia's legislation is now consistent with that of other states and territories. Importantly, as a result of these changes, the state is no longer involved in the censorship of products, and the purpose of its Censorship Act 1996 now mainly relates to the enforcement of classification decisions.

Following on from these important changes to the act, it is now proposed to change the name of the legislation to the Classification (Publications, Films and Computer Games) Enforcement Act, so that the name better reflects the purpose of the act. This name is consistent with the names of the equivalent legislation in other states, particularly Victoria's Classification (Publications, Films and Computer Games) (Enforcement) Act 1995, New South Wales' Classification (Publications, Films and Computer Games) Enforcement Act 1995 and Tasmania's Classification (Publications, Films and Computer Games) Enforcement Act 1995. The change to the name of the legislation was foreshadowed when the 2003 amendment act was being debated in Parliament.

The Western Australian Censorship Amendment Act 2003 also made a number of changes to the legislation to assist the Western Australia Police Service to enforce the legislation. However, despite the above changes, the Western Australia Police Service is still experiencing difficulties with certain forfeiture, evidentiary and infringement notice provisions contained in the Western Australian Censorship Act 1996. Members are aware that the government is committed to assisting the Police Service to crack down on the availability of child pornography, and to improve the efficacy of the enforcement provisions in the Western Australian Censorship Act 1996.

I will now outline the measures in this bill that will address the problems identified by the Police Service in relation to the investigation of child pornography. The bill also contains the necessary amendments to evidentiary certificates and infringement notices, which will further assist the Police Service in its enforcement of the legislation.

Child pornography - forfeiture provisions: On receiving information indicating that a person may possess child pornography on a computer system, the Western Australia Police Service child abuse unit generally takes out a search warrant under section 711 of the Criminal Code to investigate the disclosure. The police officers search the suspect's premises and seize computers and any other property that may provide evidence. Upon the seizure of a computer, it is forensically analysed by the computer crime investigation unit of the Police Service. The unit searches the hard drive and gathers any images and evidence related to the alleged offence. It is usually not possible to charge the suspect with an offence relating to child pornography until the computer crime unit has completed its analysis.

Subsection 117(2a) of the Western Australian Censorship Act 1996 provides for the forfeiture of films classified "refused classification" - RC - or X, and publications or computer games classified RC, or child pornography, seized under this part, if no person has been charged after 12 months. However, although this subsection applies to child pornography, it does not apply to material highly likely to be, or contain, child pornography. Moreover, it applies only to material seized under this part but not under a Criminal Code search warrant. Section 112(2) of the Western Australian Censorship Act 1996, which deals with entry, inspection and seizure, relates only to businesses and cannot be used for private premises.

Although it was intended that subsection 117(2a) would apply to child pornography, the Police Service is required to comply with subsection 117(3) of the Western Australian Censorship Act 1996. However, this subsection requires the police to apply for a summons within 60 days of seizure. Moreover, under subsection 117(6) of the Censorship Act 1996, the court has the option of forfeiting the seized thing to the Crown - if an offence has been committed - or ordering that the thing be returned to the person who possessed it prior to seizure. It does not provide the court with the option of returning the thing to the police to enable the investigation to be completed. As it typically takes more than 60 days for a computer to be analysed, subsections 117(3) and (6) hinder police investigations of child pornography. To facilitate the investigation and prosecution

of persons who possess child pornography on computers, this bill will overcome the problems being experienced by the Western Australia Police Service regarding forfeiture.

Evidentiary provisions: Section 141 of the Western Australian Censorship Act 1996 provides that the Director or Deputy Director of the commonwealth Office of Film and Literature Classification can issue a certificate relating to the classification of a film, publication or computer game. Under section 87 of the commonwealth Classification (Publications, Films and Computer Games) Act 1995, the Director of the commonwealth Office of Film and Literature Classification can issue evidentiary certificates regarding actions taken or not taken under that act.

However, courts in both Victoria and Western Australia have disallowed such evidentiary certificates as evidence to prove that a film had been classified at the time of seizure. In January 2003, a Western Australian magistrate held that under section 141 of the Western Australian Censorship Act 1996, although a section 87 certificate could be used to prove that a film was classified on the date the certificate was issued, it could not be used to prove that a film was classified on the date of the seizure or alleged contravention.

This bill amends the Western Australian Censorship Act so that section 87 certificates issued by the Director of the commonwealth Office of Film and Literature Classification can be accepted into evidence in relation to the classification of films, publications and computer games at the time of the alleged offence.

Infringement notices: Section 117D of the act provides that a member of the Police Force or a designated person can issue an infringement notice to a person who has committed a prescribed offence under the act. At this stage, it is not intended for any person other than a police officer to be able to issue an infringement notice.

Unlike other statutes, for example the Road Traffic Act 1974, the act does not currently enable a police officer to extend the period of payment for an infringement notice or allow a police officer - that is, a person who can issue an infringement notice - to withdraw an infringement notice. This bill amends the act to enable police officers authorised by the Commissioner of Police to extend the period of payment for an infringement notice or withdraw an infringement notice. New classification categories - films and computer games: As I mentioned, Western Australia is a full participant in the National Classification Scheme, which commenced in January 1996. Under this scheme, the commonwealth Office of Film and Literature Classification classifies publications, films and computer games pursuant to the Classification (Publications, Films and Computer Games) Act 1995, which is a commonwealth act.

Western Australia, in conjunction with the other states and territories, adopts commonwealth classification decisions. Those decisions are enforced under the Western Australian Censorship Act 1996. The commonwealth act sets out the classification categories for publications, films and computer games. On 26 May 2005, the classification categories for films and computer games in the commonwealth act were amended to reflect the new combined classification categories for these articles. The new combined classification categories for films and computer games now cited in the commonwealth act are G, PG, M, MA15+, R18+, X18+ and RC - Refused Classification.

The use of combined classifications for films and computer games, based on the current classifications for films, will create simple and well-known classification bands for the community and assist parents in determining suitable material for their children. It will also create a more effective distinction between those classification categories that are advisory in nature - G, PG, and M - and those to which legally enforceable restrictions apply - MA15+, R18+ and X18+. This distinction will be achieved by the removal of age references from the unrestricted classification categories and the use of age references for the restricted classification categories only.

Importantly, while the bill renames the classification categories, it does not relax the content of material that is permitted within each classification, nor does it introduce an R classification for computer games.

The Western Australian Censorship Act 1996 refers to the previous separate classification categories for films and computer games. The classification categories for films in this legislation are G, PG, M, MA, R, X and RC. Computer games classification categories are G, G8+, M15+, MA15+ and RC. This means that the new classification categories in the commonwealth act are different from those in the Censorship Act 1996 and this will compromise the ability of the Western Australia Police Service to bring a successful prosecution in regard to films and computer games.

This bill amends the Western Australian legislation to incorporate the new combined classification categories for films and computer games so that they will be the same as those referred to in the commonwealth act.

As it was not possible to amend the Western Australian Censorship Act 1996 by 26 May 2005, appropriate transitional provisions have been drafted in the bill so that the new combined classification categories for films and computer games are deemed to apply from 26 May 2005 after enactment of this legislation. I commend the bill to the house.

Debate adjourned, on motion by **Dr S.C. Thomas**.