Mr R.F. JOHNSON: Mr Speaker, under clause 4 -

Mr A.D. McRae interjected.

Mr R.F. JOHNSON: Dumb and Dumber are having a go again! It is Dumber, rather than Dumb, who is speaking this time. We have had it in this house so many times. The members for Perth and Riverton never learn; they sit there like a couple of monkeys. I said they were Dumb and Dumber, and the member for Riverton asked “Which one am I?”

The SPEAKER: As the member for Hillarys knows, we should address the clause we wish to talk about. If he addresses the clause, we will proceed very well.

Mr R.F. JOHNSON: That is what I wanted to do; I wanted to address the clause, until Dumber made a contribution. I will come back to the clause because it is important. This is not a hard question; even Dumb and Dumber would probably know this, but I would like the Minister for Justice to explain so that it is on the record.

The purpose of clause 4 was explained to me in brief detail yesterday, but perhaps the minister can explain now, so that it is on the record in this house, the exact purpose of this clause, the reason for it, what it achieves and what it relates to.

Mr J.B. D'ORAZIO: Clause 4 renames the Censorship Act to the Classification (Publications, Films and Computer Games) Enforcement Act. This brings us into line with the federal act, and what has been adopted by all the other states. It then brings in other legislation, which the member referred to earlier, in which the name of this act is referred to in other legislation. It corrects the anomaly.

Mr R.F. Johnson: Would you explain this as a deeming condition? Yesterday it was explained as a deeming condition, because it picks up certain people. That is how it was explained to me yesterday. I just want the minister to explain exactly what that means.

Mr J.B. D'ORAZIO: Clause 4(3) will result in a reference in any other act or regulation to the Censorship Act 1996, unless the context requires otherwise, being read or construed as a reference to the Classification (Publications, Films and Computer Games) Enforcement Act 1996, which brings us into line with the commonwealth and other states.

Mr R.F. Johnson: Who does it pick up? I was told yesterday that it picks up certain people. Will the minister tell me which individuals these are?

Mr J.B. D'ORAZIO: A previous act refers to the new title rather than the old title. By giving the act the new title, we have fixed this anomaly.

Mr R.F. Johnson: We had a briefing yesterday.

Several members interjected.

Ms S.E. WALKER: I have spent a lot of time on this legislation, and the three fools here keep giggling. I want to know what is being said about the legislation. I ask the Speaker to ask these members to go outside if they want to giggle.

The SPEAKER: I was concentrating on something else. It is inappropriate to interject to the extent that people who wish to listen to the debate cannot hear it. If people do not wish to contribute to the debate, and they cannot resist speaking, they should leave the chamber.

Mr J.B. D'ORAZIO: This clause picks up the anomaly that was created on 1 February and will exist until this legislation is enacted, in that the name of the legislation in another act was different from what the legislation is called. This corrects that anomaly and solves that problem.

Mr R.F. Johnson: So it picks up people who commit offences under that other act?

Mr J.B. D'ORAZIO: Yes; this refers to its proper name.

Clause put and passed.

Clause 5: Section 117 amended -
Mr R.F. JOHNSON: Will the minister give a brief outline of what will be achieved by amending section 117 with the amendments contained in this bill relating to the investigation of child pornography?

Mr J.B. D’ORAZIO: Clause 5 allows the police to hold on to the equipment for up to 12 months for cases in which it is highly likely that the equipment contains child pornography. Currently, a summons is required to keep the equipment after 60 days. Under this clause, the equipment can be kept for up to 12 months if it is highly likely to contain child pornography. After 12 months the equipment can be kept if it is believed it is highly likely to contain pornography. This provision will give the police far more power than it has. Currently the police must apply for a summons or for an extension to hold onto the equipment after 60 days. This provision will allow the police to hold onto the equipment for 12 months if it is highly likely that it contains child pornography. Even if no charges have been laid, the police will be able to retain the equipment in their possession after 12 months if it is believed the equipment is highly likely to contain child pornography.

Mr R.F. JOHNSON: I understand what the minister has said, but I do not know whether he has explained if fully. We were talking about this earlier. I do not have a problem with the outcome of this amendment. I accept that the minister said that it is highly unlikely to contain child pornography -

Mr J.B. D’Orazio: I said highly “likely”.

Mr R.F. JOHNSON: Obviously I have misunderstood the minister. I thought the minister said highly “unlikely”.

Mr J.B. D’Orazio: No.

Mr R.F. JOHNSON: The minister is saying that currently the police can hold the equipment, including hard drives and everything else, for 60 days and that this amendment will extend that time to 12 months. I think what the minister has said is slightly different from what will actually take place. I think the clause means that if the police still believe the equipment is highly likely to contain child pornography, the police had to apply for a court order to retain it for more than 12 months after the 12-month period. The minister can answer by way of interjection if he would like to.

Mr J.B. D’Orazio: No, it does not. That is what I said to you earlier. It means they can forfeit the material, even though no charges have been laid, if it is highly likely that child pornography is on the computer. This covers a situation whereby someone might have seen a print-out from a computer that had child pornography on it but the hard drive cannot be gotten into for whatever reason and it is highly suspected that the computer contains child pornography. The police could keep it after 12 months without applying for a court order.

Mr R.F. JOHNSON: Is it an indefinite amount of time?

Mr J.B. D’Orazio: The person would forfeit it.

Mr R.F. JOHNSON: Completely?

Mr J.B. D’Orazio: If it is highly likely that child pornography is on it.

Mr R.F. JOHNSON: If it is highly likely to contain child pornography, it can be kept forever as far as I am concerned. The area of concern I have is about bringing charges against people who are collecting this type of material on their computer system and are distributing it. I explained to the minister that I might have that type of material on my computer, not because I put it on there but because a perverted person somewhere in the world sent me an e-mail with an attachment that contains child pornography. I am holding child pornography, I imagine. I have not opened it, but judging from the description on it, it looks like it does contain child pornography. The minister will address that. Technically, police could take away my computer if they believe I am holding child pornography on the computer, even though I did not put it there or solicit it; it is there because someone sent me a dreadful e-mail. Technically, I would have thought that I would be considered guilty of holding child pornography. The minister said earlier that that was part of the federal Telecommunications Act, which should address it. I do not mind that. However, this is contained in division 1 of the Censorship Act which refers to a person who is “in possession” of child pornography. It is not a matter of the person wanting to be in possession of it. A person who is in possession of it could be deemed guilty.

Another point is the very long time it takes the police to find this type of material. I am concerned about whether enough specialist officers are employed who can get all the information off the hard drives in a reasonable time. I want to see people who possess such material charged in less than 18 months, if that is the amount of time it takes to find this vile type of literature. Will the government commit to increasing the number of officers who can deal with this type of offence so that the 12-month period does not have to be extended?

Mr J.B. D’Orazio: The staffing of the unit is obviously a matter of police resourcing, although I am informed that extra resources have been allocated to that area. When a sting is being conducted, obviously more resources are put into it at the appropriate time. It has been pointed out to me that in some circumstances it is
very difficult to prove that a person knowingly downloaded this type of material and can therefore be charged. Under this clause, if the police believe it is highly likely that the computer equipment contains child pornography on it, the police have the ability to take the equipment even though no charges have been pressed. That is the provision of this clause.

**Mr R.F. Johnson:** My computer could hold that.

**Mr J.B. D’Orazio:** This clause is not aimed at people who, like the member, innocently receive offensive material. This clause is about trying to get access to that type of material. Some of the hard drives and other devices on which this type of material is stored are very difficult to break into and get access to. If other evidence suggests that computer equipment may have these types of images on it, under this provision the police can take the computer and keep it so that it does not get back into the system.

**Mr R.F. Johnson:** Is that because it is highly likely that there will be child pornography on that computer system?

**Mr J.B. D’Orazio:** Yes.

**Mr R.F. Johnson:** I must tell you that I and others may have that type of material on our computers from the crap e-mails we are sent that have attachments. I want to know how that is being addressed.

**Mr J.B. D’Orazio:** That will not change. This clause will give the police the ability to keep a computer that they believe contains child pornography in circumstances in which charges might not necessarily have been laid.

**Mr A.J. Simpson:** The member for Hillarys made a point about hard drives.

**The Speaker:** Is this a point of order?

**Mr A.J. Simpson:** Yes, it is, Mr Speaker. It is a point of clarification.

**The Speaker:** A member cannot interrupt a minister to give his point of view while the minister is on his feet.

**Mr J.B. D’Orazio:** I have finished saying what I wanted to say.

**The Speaker:** The member for Serpentine-Jarrahdale.

**Mr A.J. Simpson:** As a point of clarification, the hard drive contains information about the web sites a person has visited. That will tell the police whether the owner of the computer has used his credit card to buy pornographic material. If someone is sent an e-mail, the police cannot lay charges against the person to whom it was sent because somebody else had sent it, although a person could lose his job because of it. The hard drive contains information about the web sites a person has visited. If that person used his credit card, the police could trace the credit card statement from the computer, and they would catch the person. It would prove that the owner bought it and took receivership of it. However, if somebody is sent an e-mail, he can tell the police that it was sent by somebody else. The police cannot charge someone for receiving an e-mail. However, if the police searched the hard drive and found another 120 offensive photographs stored on the hard drive, that would be it. If a person has been sent one or more e-mails, he can tell the police that someone else had sent it, and point the police in the direction of the person who sent it. The minister is trying to make the point that once the police have a person’s hard drive in their possession, they can find all the web sites the person has visited in Russia, for example, which is where the majority of that type of material comes from. The police can then match the owner’s credit card statement with what he has been paying each month to certain web sites to receive information. Does that clear it up a bit?

**Mr J.B. D’Orazio:** I am advised that a person can be charged only if he saves or downloads it. The police cannot lay charges against someone who receives an e-mail as an attachment. The material must be saved or downloaded. That is the advice I have received about the current process.

**Mr R.F. Johnson:** Under what act? That is just a comment from your adviser from the police department. With all due respect, that is just a comment. Where can we be guaranteed that that is the case?

**Mr J.B. D’Orazio:** I am advised it is an interpretation of section 60 of the Censorship Act.

**Mr R.F. Johnson:** Whose interpretation is that? Section 60 of the Censorship Act relates to child pornography. That is the point I made to the minister. Section 60(4) of the main act states that a person who possesses or copies child pornography is guilty of a crime and is liable to imprisonment for five years. The word I am stressing is “possesses”.

**Mr J.B. D’Orazio:** The interpretation given to me by the police adviser is that possession means the material has either been saved or downloaded. That is how the police interpret possession before a person is charged.

**Mr R.F. Johnson:** What is meant by downloaded?
Mr J.B. D’ORAZIO: Put on a hard drive.

Mr R.F. Johnson: A lot of these things are part of a hard drive.

Mr J.B. D’ORAZIO: The member’s knowledge of computers is about as good as mine! I am relying on the advice that I am given. I am told that material is either saved or downloaded.

Mr R.F. Johnson: What if material is deleted?

Mr J.B. D’ORAZIO: That is not saved or downloaded.

Mr R.F. Johnson: It is important that you put this on the record because people are concerned.

Mr J.B. D’ORAZIO: I will give three examples of “highly likely to be, or highly likely to contain”. One is when other printed materials or items containing child pornography are located and the offender is charged over the other items. In other words, the hard drive is linked to other charges. Another example is when an offender confesses that child pornography is on his system but, prior to charging the offender, police want to examine the computer to confirm the offender’s confession. Thirdly, police may seize CDs or DVDs that appear to have been produced by the offender on a computer system. In that case, police may opt to keep the computer as it is “highly likely” that child pornography is on the computer.

Ms S.E. WALKER: I wonder where the phrase “highly likely” came from. Is it used in other legislation in other states? It seems a very sweeping phrase. I suppose I could enter the debate on whether the member for Hillarys would be charged. I will use him as an example. Alternatively, I could use the member for Girrawheen. She could be sent material that she asked for in an e-mail. However, she may not download it. That does not mean that she is not guilty of possession. As such, I do not agree with any of the advice put forward. The member would be open to charges if material was found on his computer, whether or not it was saved.

Mr J.E. McGrath: No way.

Ms S.E. WALKER: Yes, he would. If material was sent to a person for his pleasure and enjoyment and he opened it, he could. The point is whether a person knew it was coming. The member for Hillarys did not know it was coming.

Ms M.M. Quirk interjected.

Ms S.E. WALKER: If I have said it once, I have said it a thousand times. If the member for Girrawheen wishes to say something, please stand up and say something.

Ms J.A. Radisich interjected.

Ms S.E. WALKER: The same to the member for Swan Hills. She should get up and say something.

I do not agree with some of the comments. I believe the member for Hillarys would be open to prosecution under the Criminal Code. I ask the minister again about the phrase “highly likely”.

Mr J.B. D’ORAZIO: “Highly likely” is parliamentary counsel’s recommendation of a legal definition that gives us greater certainty. It provides a high level of proof.

Mr J.E. McGrath interjected.

Mr J.B. D’ORAZIO: It was recommended as a higher level of requirement. That is why it is in the bill. With regard to possession, an individual has to do something to possess information. An e-mail sent to a person from someone else is not interpreted as possession.

Ms S.E. Walker interjected.

Mr R.F. Johnson: Once I open it, it is an action.

Mr J.B. D’ORAZIO: I am referring to the word “possession”. I tell the member what I am advised. The word “possession” is interpreted as doing an act to possess something.

Mr R.F. Johnson: Opening the e-mail is doing an act. From what the minister has just said, that is possession.

Ms S.E. WALKER: With due respect to the minister, that does not make sense. I could leave a packet of heroin on the desk of the member for Hillarys, but he will have done nothing. He may be in possession of it. The same exists with e-mails. An e-mail may be sent to someone and he opens it. Anyone could use that as a device for asking to see all the child pornography that another person may possess. He may ask for it to be sent to him by e-mail and he will open it, but he will not save it. As such, he believes he is not in possession. In my view, that is nonsense.
I want to help the police as much as I can on this. Why do we have the provision “highly likely” in this state when it is a national scheme? The scheme is adopted by all states. Why us? Why do we have “highly likely” and no other state has it? What is different about us? Are our computers different?

Mr R.F. Johnson: Is it in any other state legislation?

Ms S.E. Walker: No. I do not think so.

Mr J.B. D’Orazio: The reason the phrase is in the legislation is that the act contains forfeiture provisions. That is why the phrase “highly likely” is used in the clause.

Ms S.E. Walker: Is there forfeiture in other provisions in other states?

Mr J.B. D’Orazio: We have not checked that. We will find out what is contained in other acts and relay it to the member. My advice is that the phrase is specific to our legislation. It came from legal counsel on the basis of trying to move the bar higher rather than lower.

As I said earlier, the member may be technically right about possession. I am not a lawyer but she is. However, I am advised that that is not the way it is enforced. If a person is in possession of such material, the police will chase the person who sent it. More importantly, it is part of the original act and not this bill.

Ms S.E. Walker: I would be most concerned if a person in this state had 100 e-mails sent to him over a few months that contained child pornography, and it had not been downloaded in the belief that he could not be prosecuted.

Mr R.C. Kucera: That is the nature of all charges.

Ms S.E. Walker: Thank you; I do not want to listen to what the minister has to say.

I would be concerned if that were the case, but I do not think it is. However, I do not want to dwell on it. I wonder why our state has the provision “highly likely to be”. Under section 117(2a)(c) a hard drive is not forfeited; it is the computer. Is that not right?

Mr J.B. D’Orazio: The hard drive is in the computer.

Ms S.E. Walker: I am talking about the board, the screen - whatever - the whole thing.

Mr J.B. D’Orazio: I am informed that just the hard drive is taken.

Ms S.E. Walker: Okay.

Mr R.F. Johnson: I would like to hear more of the comments from the member for Nedlands, who just spoke. The minister did not respond, and she needs somebody to interrupt her last speech so she can make her next speech.

Mr J.B. D’Orazio: I apologise, member for Hillarys. This is my first time.

Mr R.F. Johnson: Not a problem. The minister is doing okay.

Ms S.E. Walker: We appreciate the member for Hillarys’ experience in the chamber. Under clause 5, section 117(2a) is amended by deleting “under this Part”. Subsection (2a) of the principal act states -

- If -
- (a) a film classified RC or X;
- (b) a publication or computer game classified RC; or
- (c) child pornography,

has been lawfully seized under this Part . . .

It goes on to state that it can be forfeited. If we are deleting “under this Part”, how else could something be lawfully seized in this state and subject to forfeiture?

Mr J.B. D’Orazio: I am told it would be done by using a search warrant that had been issued under section 711 of the Criminal Code. They could come in with a search warrant and collect the material under that section.

Ms S.E. Walker: You are just extending it to make sure you cover child pornography?

Mr J.B. D’Orazio: Yes, to include child pornography.

Ms S.E. Walker: I have the same question about subclause (3), which seeks to amend section 117(3) of the Censorship Act by deleting the words “seized under section 112 or under a search warrant”. What is the reason for deleting those words?
Mr J.B. D’ORAZIO: Those words are sought to be deleted because they restrict the power of the police to seize material. Material may come into the possession of the police in a number of different ways. The deletion of those words will give the police the power to collect material in ways other than by lawfully seizing it. “Lawfully seized” is the new terminology. The old words are too specific.

Ms S.E. WALKER: Subclause (4) seeks to amend section 117(6) of the Censorship Act by inserting a new paragraph (c). Why is that necessary?

Mr J.B. D’ORAZIO: This new paragraph will allow the police, with the approval of the court, to hold the material for 60 days if it does not contain child pornography.

Ms S.E. WALKER: Where does it say it can be held for 60 days?

Mr J.B. D’ORAZIO: It says the material may be held “for such further period as the court thinks fit”. The court has to approve it. The police may be interested in material other than child pornography, in which case they will need to go to the court to get an extension to 60 days. However, if the material is child pornography, the police can hold it for up to 12 months.

Mr R.F. JOHNSON: If the police have seized the computer and the hard drive in the belief that it contains child pornography, and then they establish that it does not -

Mr J.B. D’ORAZIO: They cannot prove that it does.

Mr R.F. JOHNSON: The minister has said that this deals with material that may be other than child pornography. If the police have seized the hard drive on the basis that they believe it is highly likely that it contains child pornography, they can keep it for up to a year, until they have concluded their investigations into that matter. However, the minister is now saying that if the police believe there may be something else on the hard drive that is not related to child pornography, they can keep it for longer than 60 days, but they will need to go to court to get an order to keep it. It may be a completely unrelated item. It may be a confidential letter that the police believe constitutes a conspiracy to commit a crime. What sort of unrelated matter will need to be dealt with by a court order?

Mr J.B. D’ORAZIO: They can keep the material only if it relates to the Censorship Act, and it must be within the 60 days. If it is highly unlikely to contain child pornography, the 60-day rule will apply, and the police will need to get approval from the court to hold it for longer than 60 days. If they do not do that, section 714 of the Criminal Code will apply, under which the material must be given back to the original person.

Mr R.F. Johnson: So the police only need to say they think it is highly likely there is something on there, and then they can keep it for longer than 60 days?

Mr J.B. D’ORAZIO: If it is clearly not highly likely that the material contains child pornography, and if there is other material that the police are interested in, they will need to apply to the court if they want to hold that material for longer than 60 days.

Mr R.F. Johnson: Does the minister accept that those words are probably a bit superfluous, because the police can maintain that they still think it is highly likely that it contains child pornography, even though they have discovered that it does not, and they can then keep it for longer and delve into the personal finances or correspondence of a person?

Mr J.B. D’ORAZIO: There may be circumstances in which it is clear that there is nothing on the hard drive to do with child pornography. However, this amendment will allow the police to go to the court and seek an extension for more than 60 days if they can explain why they need to do that. To some degree is may be a bit superfluous, but if there is a specific case, this would cover it.

Mr R.F. Johnson: Even if they believe it is unrelated to child pornography?

Mr J.B. D’ORAZIO: Yes. It goes back to the search warrant power.

Mr R.F. Johnson: Normally the search warrant power would be for specific things such as child pornography. The police do not have an open-ended search warrant to search somebody’s home.

Mr J.B. D’ORAZIO: I am not a lawyer - the member for Nedlands may have a better knowledge of this - but there is what is called a chance find, which allows the police to do all sorts of things under the search warrant provisions. It is an area that I do not know much about, but I am advised that it comes under the common law.

Mr R.F. Johnson: Is that encompassed in the search warrant that has been sought?

Mr J.B. D’ORAZIO: It comes under the common law, which is independent of this legislation.

Mr R.F. Johnson: I think some civil libertarians might want to raise some issues about that, but I will not progress that any further at this time.
Ms S.E. WALKER: Subclause (5) seeks to insert a new subsection 117(9), which states -

“lawfully seized” means lawfully seized in relation to an alleged offence under this Act.

How does that fit with the Criminal Code or any other act?

Mr J.B. D’ORAZIO: If material is lawfully seized in relation to an alleged offence under this act, it has to proceed under this act.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Section 117F amended -

Ms S.E. WALKER: This is an interesting clause, because, as the minister has said during this debate, infringement notices came into being in this state in 2003. Are police officers the only people who can issue infringement notices?

Mr J.B. D’ORAZIO: The minister can authorise any person to be a designated person.

Ms S.E. WALKER: What sort of people would the minister authorise?

Mr J.B. D’ORAZIO: It could be justice department people or police officers.

Ms S.E. WALKER: How would that work? How would a person in the justice department issue an infringement notice for censorship?

Mr J.B. D’ORAZIO: At this stage, no-one other than a police officer is designated to issue an infringement notice and we do not intend to change that.

Ms S.E. WALKER: At the moment, a police officer who issues an infringement notice can withdraw that infringement notice - is that the idea? Part 3 of the bill, of which clause 7 is a part, will tighten up the provisions so that a police officer who issues an infringement notice cannot withdraw it. Will the person who is given that responsibility - I refer to an acting commissioner or someone like the Minister for Disability Services, the member for Yokine - be someone who is reliable and trustworthy so that we can ensure that there is no corruption in the system?

Mr J.B. D’ORAZIO: This clause allows a police officer to issue an infringement notice; however, that same police officer cannot withdraw it. Someone delegated by the Commissioner of Police will be given the power to remove an infringement notice, so that there is no conflict of interest. We do not want a person who issues an infringement notice to have the power to withdraw it.

Ms S.E. Walker: That doesn’t guarantee it though, does it?

Mr J.B. D’ORAZIO: It does, because the clause states that the person who issues it cannot withdraw it.

Ms S.E. Walker: What about a mate - not that I’ve got anything against the Police Force?

Mr J.B. D’ORAZIO: An officer designated by the Commissioner of Police will be able to withdraw it.

Ms S.E. Walker: I am always mindful of the Lewandowski affidavit.

Mr R.F. JOHNSON: I understand the concern of the member for Nedlands. Indeed, to some extent I share her concern. The minister said that a police officer who issues an infringement notice cannot rescind that notice. The minister said that it must be somebody else - I assume he means a police officer - who is designated by the Commissioner of Police.

Mr J.B. D’ORAZIO: He or she must be a commissioned officer authorised by the Commissioner of Police. It cannot be another constable; it must be a police officer of a certain level.

Mr R.F. JOHNSON: I imagine that that person would be an inspector or someone with a higher rank. That is what I would hope. Will this be carried out on a case-by-case or infringement-by-infringement basis, or will one specific inspector or high-ranking officer within the Police Service be given the authority to rescind an infringement notice that has been issued by a constable or sergeant, whether it be in Perth or one of the regional areas? Will such a person be a permanently designated officer, or will that person be any commissioned officer - an inspector or above - in any area of Western Australia? Will the officer who issues an infringement notice be informed of the rescission? I am hoping that the provisions will avoid the possibility of corruption, collusion or doing a favour for a mate. An officer may in good faith issue an infringement notice against suspect A. However, suspect A might know somebody who is an inspector in the Police Service or who holds a higher rank and he might ask that person to rescind the infringement notice. I am concerned about that; it should not happen. Will the commissioned officer - an inspector or someone with a higher ranking - have to report to somebody who has an even higher ranking when they rescind an infringement notice? If we want to achieve a completely open
and accountable system, maybe that should be considered so that an inspector or an officer with a higher ranking cannot do a favour for a mate. That is my concern. Obviously we - or the minister, because he is in charge - must address that issue. Perhaps we should amend the bill to ensure that the commissioned officer who rescinds an infringement notice has to report to a more senior officer.

Mr J.B. D’ORAZIO: That is not in place at the moment. The processes that are in place relate to traffic infringements. I am informed that the commissioned officer will discuss the process with the issuing officer. At the appropriate time, a decision will be made by the commissioned officer. Under this clause, the Commissioner of Police has to authorise a commissioned officer and the commissioned officer will consider matters on a case-by-case basis. However, the department will outline its policies and explain how the process will be implemented. There is no reporting mechanism for traffic infringements, and none is proposed under this clause. This is about the Police Force operating this clause in accordance with the act. The Commissioner of Police can authorise a commissioned officer to be in charge of this area. The department will look after this particular area. It will liaise with the person who issued the infringement notice, and a decision will be made by the commissioned officer.

Ms S.E. WALKER: We are discussing three different areas at once. Having issued an infringement notice, why would a police officer withdraw it? Has there been a situation in which something dodgy has been suspected because a police officer has withdrawn an infringement notice?

Mr J.B. D’ORAZIO: The only way that this would happen is if a defendant complained about the process involved. A more senior officer would consider the case and liaise with the person who issued the infringement notice, and a decision would be made about whether there are appropriate grounds to withdraw it.

Ms S.E. Walker: Has concern been expressed about corruption at that level? Why is it being changed?

Mr J.B. D’ORAZIO: There has been no mechanism for the withdrawal of infringement notices. Previously, a police officer could not be the designated person and could not withdraw the notice. This provision will give the Commissioner of Police the ability to have a commissioned officer withdraw an infringement notice. That is the difference between the current process and the new process.

Ms S.E. Walker: Where in the Censorship Act does it state that the police officer who issued the infringement notice can withdraw it?

Mr J.B. D’ORAZIO: I refer the member to section 117J. I am informed that although a police officer cannot withdraw it, a public servant can.

Ms S.E. Walker: Where?

Mr J.B. D’ORAZIO: I am told that it is contained in section 117J(1), which reads -

The Minister may, in writing, appoint persons or classes of persons to be designated persons for the purposes of section 117D, 117E, 117F or 117G or for the purposes of 2 or more of those sections.

Ms S.E. Walker: Does section 117G refer to withdrawing an infringement?

Mr J.B. D’ORAZIO: That is right.

Ms S.E. Walker: Why is the minister putting in the provision for a higher ranking officer?

Mr J.B. D’ORAZIO: Section 117J(3) reads -

A person who is authorised to give infringement notices under section 117D is not eligible to be a designated person for the purposes of any of the other sections.

That means that police cannot withdraw the infringement notice.

Ms S.E. Walker: But a person from the Department of Justice could?

Mr J.B. D’ORAZIO: Yes.

Ms S.E. Walker: Of which there are none appointed at the moment.

Mr J.B. D’ORAZIO: Under clause 7 we are appointing a commissioned officer who will have the ability to do it.

Ms S.E. WALKER: If an infringement notice is given under a traffic act, or wherever act it may be, how can it be withdrawn?

Mr J.B. D’ORAZIO: Infringement notices cannot be withdrawn at this time because no-one has been designated to withdraw them.

Ms S.E. Walker: How do police officers withdraw infringement notices?
Mr J.B. D’ORAZIO: Under the Road Traffic Act?

Ms S.E. Walker: Yes; how do they do it?

Mr J.B. D’ORAZIO: It is by a person of the rank of inspector or above; it is exactly the same as is being provided here. That is why this clause has been included in this form.

Mr R.F. JOHNSON: Can it be anyone of the rank of inspector or above?

Mr J.B. D’ORAZIO: Under the Road Traffic Act it can be any inspector, but under this legislation the appointment will have to be approved by the Commissioner of Police. In other words, the Commissioner of Police must designate a person for him to have the ability to do this, and that person must be of a certain rank. I am informed that under the Road Traffic Act, it can be any inspector.

Mr R.F. Johnson: Does the commissioner designate just one person? Is it not just anyone of the rank of inspector or above?

Mr J.B. D’ORAZIO: It is a commissioned officer of the Police Force who has been authorised to do so by the Commissioner of Police. It must be a commissioned officer, which outlines the rank. Under this legislation, the police commissioner must authorise a person to be eligible to remove infringement notices.

Mr R.F. Johnson: Is that one person or can the commissioner give delegated authority to rescind infringement notices to half a dozen or a dozen people of the rank of inspector or above?

Mr J.B. D’ORAZIO: The commissioner can authorise as many people as he sees fit.

Ms S.E. WALKER: Is the minister telling me that since 2003, not one infringement notice has been withdrawn?

Mr J.B. D’ORAZIO: That is correct.

Mr R.F. Johnson: How many infringement notices have been served?

Mr J.B. D’ORAZIO: I am unable to say. I asked the question of my advisers and they shook their heads. We do not have that information.

Mr R.F. Johnson: Have any been issued?

Mr J.B. D’ORAZIO: It is possible that none has been issued.

Mr R.F. Johnson: Since 2003?

Mr J.B. D’ORAZIO: We are hypothesising, because the information is not available.

Ms S.E. WALKER: During the police royal commission that we had to have, which cost how much?

Mr R.F. Johnson: Millions and millions.

Ms S.E. WALKER: It cost millions and millions of dollars. During the royal commission, some disturbing allegations were made about sexual charges against famous people or celebrities being pulled by high-ranking officers. I would have thought that if a police officer issued an infringement notice, he would not withdraw it. I have great respect for the Police Force, but there are sometimes bad apples in there. A high-ranking officer could put pressure on a lower-ranking officer to withdraw an infringement notice. Why will the officer who issued the infringement notice not be able to withdraw it himself? He would not issue it if he were going to withdraw it. I am a bit concerned about this, particularly in areas such as censorship and child pornography. Does this occur in other states? How is it done in other states?

Mr J.B. D’ORAZIO: This area of the bill does not refer to child pornography; it concerns infringements of the Censorship Act. We are putting in place a safeguard by outlining that only a more senior officer can remove an infringement notice once one has been issued. It would pose a greater danger if the person who issued the infringement notice had the power to remove it, as that might create unnecessary collusion. By stating that it must be a senior officer at the level of inspector or above who is designated to do so by the commissioner provides more credibility and integrity to the system.

Ms S.E. Walker: I don’t agree. That is not necessarily so, minister.

Mr J.B. D’ORAZIO: I will not question the integrity of the Police Force. By putting this provision in place, it will enable someone other than the person who issued the infringement notice to decide, after consultation, whether it should be removed. That is appropriate.

Mr R.F. JOHNSON: I accept what the minister is saying, but I also accept the concerns of the member for Nedlands. A very simple amendment could be made by perhaps adding some words. That would probably solve this problem and would certainly make the acts of the officers more open and accountable. For instance, I totally...
agree that an officer who issues an infringement notice should not be able to rescind it. I do not have a problem with a person of the rank of inspector or above being able to rescind an infringement notice after considering all the detail. However, if an officer has been given this authority by the commissioner, he or she should provide an automatic report to the commissioner outlining the reasons he or she rescinded an infringement notice, so that there is some accountability all the way along the line. A very simple memorandum could be sent to the commissioner that outlined why the officer rescinded an infringement notice. I do not think it would do any harm. I think it would be good. It would alleviate any accusations of possible collusion, corruption or whatever, the sort of which the member for Nedlands has related.

Mr J.B. D’ORAZIO: That should not be part of the legislation. If it were to happen, it would be a matter for the police department to decide as a matter of policy. I do not anticipate making such an amendment to the bill, as what has been suggested is not reflected in any other processes adopted by the police department in dealing with a similar but far more expansive area; that is, traffic infringements.

Ms S.E. WALKER: We are not dealing with traffic infringements; we are dealing with the Censorship Act. As outlined in the Government Gazette, people can be issued with an infringement notice for displaying category 2 restricted material in a non-opaque package. The penalty is a fine of up to $5 000. I do not know what category 2 material is - I could find out - but I suspect that if it must be in an opaque package, it should not be seen. A young officer may issue an infringement notice for that offence. However, the person to whom the notice is issued may ring a mate in the Police Force who is of the rank of inspector or above - believe me, that has happened - to have the infringement notice removed. Frankly, it is not the same thing as talking about the Road Traffic Act. Is this provision in place in any other state? Are infringement notices issued in other states, and can they be withdrawn by senior ranking officers?

Mr J.B. D’ORAZIO: I cannot inform the house of whether infringement notices are issued in other states. The police department already has reporting processes in place to deal with the discretionary ability to withdraw infringement notices. The bill reflects the normal processes. I have no intention of changing them.

Ms S.E. WALKER: I just make the point that there is a long list of quite serious offences for which an infringement notice can be issued. For instance, a minor who is 15 years of age or older must not buy a computer game classified as RC. That means that that material cannot be available in the public domain. This provision cannot be equated with provisions on traffic offences. That is nonsense. Could the minister tell me what legislation is in place in other states on the issuing of infringement notices and the offences they relate to, and how they can be withdrawn? In my view, it would be highly unlikely for a police officer to issue an infringement notice and to then withdraw it. It is more susceptible to corruption for a higher-ranking officer to be involved. I stress that I have a huge degree of confidence in the Western Australia Police Force. However, it is easy for a person at a higher level in the Police Force to pressure a person at a lower level.

Mr J.B. D’ORAZIO: As the member said, this clause refers to infringement notices and it is about display, not about selling or possessing. Those offences are dealt with under a different process.

Ms S.E. Walker: Section 84(2) of the Censorship Act is about buying a computer game classified RC.

Mr J.B. D’ORAZIO: This clause deals with the actual minor, not the person who is selling.

Ms S.E. Walker: I know.

Mr J.B. D’ORAZIO: I undertake to get the information the member for Nedlands asked for. It is important to know what is happening in the other states. I will do that before we get to the third reading stage. I cannot give that information right now, because I do not have it.

Ms S.E. WALKER: To clarify that: section 84(2) may be a provision. I am not talking about the penalty to the minor; I am talking about the fact that a person in a shop may be selling that material to young people.

Mr J.B. D’Orazio: The kid who bought the material would get the infringement; not the person who actually sold it.

Ms S.E. WALKER: Sure, but who knows whether the person who is a minor is the son of someone involved? The point is that it can leave it open to corruption. It would be unusual for a person to issue the infringement notice and then withdraw it.

Mr J.B. D’Orazio: I think we have dealt with this issue fairly extensively.

Ms S.E. WALKER: So do I.

Mr J.B. D’ORAZIO: I do not propose to make any more changes, but before the third reading stage I will undertake to find out whether infringement notices are issued in other states and the processes involved.

Clause put and passed.
Clauses 8 and 9 put and passed.

Clause 10:  Section 3 amended -

Mr R.F. JOHNSON: The minister and his advisers have certainly assisted the passage of this bill through the consideration in detail stage, and I appreciate the clarification they have given. The rest of the bill deals with classification changes reflecting the national scheme. That is a bit of housekeeping to make things consistent throughout Australia. I believe we are the last state to do this.

Mr J.B. D’ORAZIO: Yes.

Mr R.F. JOHNSON: We should not be lagging behind; we should be up with the other states. I will not make any comments on the remainder of the bill at this stage because it is mainly about reclassifications. The member for Nedlands may wish to comment or ask questions, and that is her prerogative. I would be very happy to conclude the consideration in detail and not go to the third reading today because, in all good faith, the minister needs to provide further information. However, we can finish the third reading tomorrow.

Mr J.B. D’ORAZIO: The member for Nedlands would like clarification on the classification changes. Currently for film -

Ms S.E. Walker: Can I be given a comprehensive chart?

Mr J.B. D’ORAZIO: There is a chart in the explanatory notes which takes one through the reclassifications. There are no dramatic changes and it basically brings us into line with the standards that have been adopted in other states.

Clause put and passed.

Clauses 11 to 34 put and passed.

Schedules 1 and 2 put and passed.

Title -

Mr J.B. D’ORAZIO: I would like to thank the members for Hillarys, Nedlands and Serpentine-Jarrahdale for their support for this bill. The member for Serpentine-Jarrahdale has a very good knowledge of computer systems and hard drives. Maybe I need some lessons on computers.

This legislation is important. It brings us into line with the rest of Australia and fixes up some anomalies. I thank the opposition for its support and I will provide the information I promised to members opposite before the third reading stage.

Title put and passed.