

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)  
ENFORCEMENT AMENDMENT BILL 2016**

*Introduction and First Reading*

Bill introduced, on motion by **Hon Michael Mischin (Attorney General)**, and read a first time.

*Second Reading*

**HON MICHAEL MISCHIN (North Metropolitan — Attorney General)** [5.11 pm]: I move —

That the bill be now read a second time.

This bill amends the Classification (Publications, Films and Computer Games) Enforcement Act 1996 to reflect recent amendments to the commonwealth legislation made in response to recommendations by the Australian Law Reform Commission for reform of the National Classification Scheme, the NCS. The NCS is a cooperative arrangement between commonwealth, state and territory governments underpinned by an Intergovernmental Agreement on Censorship and supported by a legislative framework comprising the commonwealth Classification (Publications, Films and Computer Games) Act 1995 and complementary enforcement legislation in each state and territory. In 2011, the Australian Law Reform Commission commenced a review of the NCS. The report, entitled “Classification—Content Regulation and Convergent Media” was released the following year. This was the first comprehensive review of censorship and classification since the 1991 report, which formed the basis of the legislation and the current cooperative scheme. As the existing scheme was developed long before the widespread availability of broadband internet access, when the wider implications of media convergence for content regulation generally were not well understood, it is hardly surprising that the 2012 report recommended significant changes to the regulatory framework and structure of the NCS.

At the April 2013 meeting of the Standing Council on Law and Justice, classification ministers agreed that reform of the NCS should be carried out in stages, beginning with a first tranche of reforms to be implemented in the short term under the current scheme. These initial reforms are intended to realise benefits for consumers, reduce administrative red tape and the regulatory burden on industry and increase industry compliance with classification laws, thereby improving the effectiveness of the NCS without prejudicing an ongoing program of major structural reforms. As the commonwealth plays the main role in classification regulation, reforms required substantial amendments to the commonwealth act. The Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014 amended the commonwealth act in relation to exemptions, modifications, decision making instruments and markings. It received royal assent on 11 September 2014 with commencement staggered over the course of 12 months. The reforms that have been made, particularly those in relation to exemptions and modifications, require consequential amendments to state and territory legislation.

**Exemptions:** The reforms to the commonwealth act broadened some of the existing exempt film categories, established additional exempt film categories for certain films covering natural history and the social sciences and created exemptions that allow for unclassified content to be screened or demonstrated at festivals or special events by festival operators or cultural institutions. The most significant element of the exemption reform is the simplification of exemption arrangements for festivals, events and cultural institutions. Previously, each state and territory’s classification enforcement legislation required film festival promoters or cultural institutions to apply to the director of the Classification Board for an exemption to publicly exhibit unclassified films at a film festival or community event. The amendments to the commonwealth act established a consolidated set of rules to replace the often inconsistent provisions contained in each state and territory’s classification legislation. The requirement to apply to the director for a formal exemption was removed and replaced with a system of conditional cultural exemptions. Conditional cultural exemptions are available under the commonwealth act on the basis of a self-assessment. However, safeguards that are similar to those previously in place for festivals will ensure that the public is being protected—particularly children.

The Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016 seeks to amend WA’s enforcement legislation to remove non-operational provisions regarding exemption applications being made to the director of the commonwealth Classification Board and to facilitate the system of conditional cultural exemptions. Although it is expected that most exemptions will continue to be sought and obtained under the commonwealth act, provisions in the WA act that allow the Attorney General to exempt an item from WA classification requirements will be retained.

**Modifications:** Schedule 4 to the commonwealth amendment act expanded the exceptions to the modifications rule so that films and computer games that are subject to certain types of modifications do not require classification. Prior to the amendments, if a film or computer game was modified, whether before or after being classified, the modified version became unclassified. Certain exceptions to this modification rule existed for

modifications that occurred after classification, including the addition or removal of advertisements, addition or removal of navigation functions and addition or removal of certain descriptions or translations of audio or visual content. The commonwealth amendments added format changes from 2D to 3D, or vice versa, to the exceptions; gave the commonwealth minister power to prescribe additional exceptions; and applied the exceptions to items modified before classification as well as after it.

Some of the commonwealth amendments will automatically flow through to Western Australia, including format changes to films and the application of exceptions to films modified before classification. The Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016 seeks to ensure that the WA act is consistent with the commonwealth act in respect of all exceptions provisions including those relating to computer games. The WA act currently fails to apply any of the exceptions to the modifications rule in respect of computer games. A similar anomaly existed in other state and territory legislation; all jurisdictions that have made amendments to apply the commonwealth amendment act have similarly remedied this issue.

**Classification Tools:** One of the major changes to the commonwealth act was the move to enable certain content to be classified using classification tools, such as online questionnaires that deliver automated decisions. This was prompted by the significant and rapid advances in technology that have occurred since the National Classification Scheme was established in 1996. The significant majority of computer games available on mobile devices and online were not classified under the NCS prior to being made available to Australian consumers. However, the Classification Board was unable to classify the vast volume of this type of content. The introduction of classification tools is intended to assist the Classification Board to classify content such as mobile and online games that are currently unclassified and readily available in the Australian market. The structure of the WA enforcement act and the way it interacts with the commonwealth act ensures that most of the new provisions relating the classification tools will automatically have effect in Western Australia. However, the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016 will make the necessary amendments to eliminate minor inconsistencies.

**Display of Markings:** The WA act currently prohibits the sale, supply, demonstration or showing of classified publications, films and computer games unless the item displays applicable determined markings. The requirement for the markings to be displayed in the required manner is implied rather than explicit. The commonwealth act was amended to specify that the minister may determine high level principles relating to classification markings as well as the display of those markings and consumer advice. It also contains a new requirement to display markings and consumer advice in accordance with the determination. The bill will insert a provision in the WA act to apply the commonwealth requirements for the display of determined markings. It will also make minor amendments to the terminology throughout the act to make it consistent with the commonwealth act.

In summary, this bill makes a variety of minor amendments to the Classification (Publications, Films and Computer Games) Enforcement Act 1996. These amendments ensure that the WA enforcement legislation is consistent with the principal legislation administered by the commonwealth. It will ensure that the National Classification Scheme continues to operate effectively and will apply important changes to this jurisdiction. The changes recently made by the commonwealth and reflected in this bill are an important first step in moving toward a modern and integrated classification scheme that is able to respond effectively to rapid changes in technology.

Pursuant to standing order 126(1), I advise that this bill is a uniform legislation bill. It is a bill that ratifies or gives effect to an intergovernmental or multilateral agreement to which the government of the state is a party.

I commend the bill to the house and table the explanatory memorandum.

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.

[See Paper 4020.]