

**CHILD PORNOGRAPHY AND EXPLOITATION MATERIAL  
AND CLASSIFICATION LEGISLATION AMENDMENT BILL 2009**

*First Reading*

Bill read a first time, on motion by **Mr C.C. Porter (Attorney General)**.

Explanatory memorandum presented by the Attorney General.

*Second Reading*

**MR C.C. PORTER (Bateman — Attorney General)** [12.33 pm]: I move —

That the bill be now read a second time.

This bill will protect children and the community in Western Australia from the evils of child pornography. The bill does so by improving and strengthening WA's criminal laws dealing with child pornography. The bill contains provisions, with some minor variations, relating to child pornography and the national cooperative classification scheme that are consistent with those adopted throughout Australia. As such, I am pleased to advise that the bill has been subject to two reviews carried out by the WA Legislative Council Standing Committee on Uniform Legislation and Statutes Review. The committee handed down two reports: report 36, issued in May 2009, and report 41, issued in October 2009. I wish to thank the committee for its work on the bill. The government has responded to the committee's recommendations and the response has been accepted by the committee.

Importantly, the bill represents the first substantial review of this state's child pornography offences since the now renamed Censorship Act 1996 (WA) came into effect in November 1996. Since this time there have been many changes in information technology, media and communication methods. This bill will bring the WA legislation up to date and reflect the impact of these changes on offences such as the possession and distribution of child pornography.

Under the proposed legislation, child pornography will be referred to and defined in the proposed definition of "child exploitation material". While this new terminology reflects the wider scope of the proposed new offences, the government has decided to retain the term "child pornography" in the definition as it is widely understood throughout the community.

Child exploitation material is pernicious and contemptible. By its very nature, it destroys the innocence and security that every child is entitled to. Therefore, persons who exploit children by possessing or disseminating this material should be subject to severe criminal sanctions. For these reasons, the government will modernise and make it absolutely clear that the production, possession and dissemination of this material will not be tolerated. Our criminal law must, and will, contain harsh deterrents in this regard. These are serious offences. Therefore, the bill provides that all child exploitation material offences will be transferred into the Criminal Code of Western Australia from the Classification (Publications, Films and Computer Games) Enforcement Act 1996. The second major aspect of the bill relates to the national cooperative classification scheme—the NCCS—which includes the commonwealth, states and territories.

The bill implements consequential amendments to the WA enforcement act required as a result of the commonwealth Classification (Publications, Films and Computer Games) Amendment Act 2007, and the commonwealth Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008. These acts amended the commonwealth Classification (Publications, Films and Computer Games) Act 1995. States and territories agreed to implement the uniform provisions in their relevant enforcement legislation.

To assist honourable members, I will firstly explain the proposed amendments to the child exploitation material laws. The current child pornography offences, in sections 60 and 101 of the WA enforcement act, were drafted in the context of the implementation and commencement of the NCCS in 1996. This was well before the launch of the Australia-wide police Operation Auxin, and the development of nationally consistent child pornography laws by the Standing Committee of Attorneys-General. As members may already be aware, Operation Auxin was the major national law enforcement investigation into internet child pornography. This operation was launched in September 2004. Operation Auxin highlighted the cross-border nature of child pornography crime, and in October 2004 the Council of Australian Governments agreed to develop nationally consistent laws in this area. Consequently, COAG requested SCAG, in consultation with the Australasian Police Ministers' Council, to undertake further work on Australia-wide consistency in child pornography offences. As a result, in December 2004 a subcommittee of SCAG produced the Model Criminal Code Officers' Committee report. This bill will implement the recommendations of that report.

As part of Operation Auxin, and to implement nationally consistent laws, the Criminal Code of Western Australia was amended in 2006 to combat cyber predator crime by creating offences for an adult to use an electronic communication to procure or expose children under 16 to indecent material. Since then, other jurisdictions in Australia, with the exception of Western Australia, have amended their child pornography laws with a view to making those laws as consistent as possible. For example, the commonwealth, Queensland, Tasmanian and Northern Territory legislation now refers to child abuse material or child exploitation material rather than child pornography. The bill incorporates this important terminology change, including other forms of abuse, in addition to what might traditionally be described as pornography; that is, the bill contains an expanded definition and refers to “any” material depicting a person or “part of a person” who is or appears to be a child “being subjected to abuse, cruelty or torture (whether or not in a sexual context)”.

The bill also expands the offence for the sale or supply of child pornography to now include a broader offence for the distribution of child exploitation material. In addition, the bill will increase the penalties for child exploitation offences such as the distribution of child exploitation material, with the maximum penalty being increased from seven years’ imprisonment to 10 years’ imprisonment; and the possession of child exploitation material, with the maximum penalty being increased from five years’ imprisonment to seven years’ imprisonment. In addition, the bill creates more comprehensive offences dealing with the production of child exploitation material, and the involvement of children in such material. For both offences, the maximum penalty will be 10 years’ imprisonment. All jurisdictions have expanded the range of offences and increased penalties for persons who possess and disseminate this type of material.

I will now deal with the consequential amendments to the WA Enforcement Act that are required as a result of Western Australia being a full participant in the NCCS. Firstly, to assist members, I will provide a brief outline of how the NCCS operates. The NCCS is a cooperative arrangement between the commonwealth, states and territories and was established in 1996. Under the NCCS, publications, films and computer games are classified by the classification operations branch in the commonwealth Attorney-General’s Department under the provisions of the commonwealth’s Classification (Publications, Films and Computer Games) Act 1995. All states and territories then adopt those classification decisions. However, the enforcement of those classification decisions is a matter for each state and territory under its complementary enforcement legislation.

In WA, the WA Police enforce classification decisions, pursuant to the WA Enforcement Act, which stipulates under what conditions restricted publications, films and computer games may be advertised, sold or exhibited. In order to improve the efficacy of the NCCS, periodic amendments are made to the commonwealth act. As mentioned earlier, the most recent of these were the commonwealth Classification (Publications, Films and Computer Games) Amendment Act 2007 and the commonwealth Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008.

In relation to the commonwealth Classification (Publications, Films and Computer Games) Amendment Act 2007, which came into effect on 15 March 2008, this bill incorporates uniform amendments that were prepared by the Parliamentary Counsel’s Committee, and agreed to by censorship ministers. Consequently, the bill will make WA enforcement provisions consistent with the commonwealth amendments and the enforcement legislation in other states and territories. The bill will give the convenor of the Classification Review Board equivalent functions and statutory powers as that of the director of the Classification Board. The bill will also streamline the film classification process and enable the director of the Classification Board to exempt an organisation from the classification requirements in relation to films and computer games.

One important result of the amendments will be to lessen the regulatory burden on industry. The second major round of amendments to the NCCS concerns the advertising of unclassified films and computer games, which came into effect around Australia on 1 July 2009. To take account of industry concerns and technological advances and to ensure that there is proper regulation for advertising of unclassified films and unclassified computer games, commonwealth, state and territory censorship ministers agreed in April 2007, following nationwide public consultation, to implement a new regulatory framework for advertising. The amendments, reflected in the commonwealth Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008, allow the commonwealth minister to make a statutory instrument that sets out the conditions for advertising unclassified films and computer games in accordance with a new advertising scheme; ensure that the instrument determining the scheme will be made after consultation with state and territory ministers; and make it clear that the advertising scheme will continue to prohibit material that is likely to be classified X18+ or RC.

The other jurisdictions have already amended their enforcement legislation to incorporate the operation of the new advertising scheme, and this bill will amend the Western Australian Classification (Publications, Films and Computer Games) Enforcement Act 1996 to ensure consistency with the national uniform legislation.

Members may be aware that a 2005 election commitment of the previous state government was to increase the penalties for child pornography offences and to transfer those offences to the Western Australian Criminal Code. Despite the obvious importance of such reforms, they were not implemented by the former government.

This bill ensures the implementation of much-needed reform in this area, and realises the government's commitment to ensure that our children are protected from those who would prey on them. I am sure all members will agree that protecting our children is a matter of the utmost importance. Consequently, in the areas of child exploitation and the national cooperative classification scheme, this bill creates new offences, substantially increases penalties, and ensures WA is an effective participant in national classification matters. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.