

CENSORSHIP AMENDMENT BILL 2002

CLAUSE NOTES

PART 1 - PRELIMINARY

Clause 1 - Short Title

This provides for the Act to be cited as the *Censorship Amendment Act 2002*.

Clause 2 - Commencement

Provides for the Act and its provisions to come into operation on a day or days to be fixed by proclamation.

PART 2 - AMENDMENTS TO THE *CENSORSHIP ACT 1996*

Clause 3 - The Act amended

Part 2 of the Bill amends the *Censorship Act 1996* (WA).

Clause 4 –Long title amended

This clause amends the long title to *the Censorship Act 1996* (WA) by removing the reference to provide for the classification of publications, films and computer games. This is necessary because the classification of these articles will be carried out under the *Classification (Publications, Films and Computer Games) Act 1995* (C'wlth) ("The C'wlth Act").

Clause 5 - Section 3 replaced

This clause deletes definitions which are no longer referred to in the *Censorship Act 1996* (WA) and inserts new definitions necessary for the operation of that Act. Where applicable, these definitions are consistent with those in the C'wlth Act. Some of the new definitions arise from the 2001 amendments to the C'wlth Act which will come into operation on 22 March 2002. For example, the Bill inserts definitions of "exempt computer game" and "exempt film" which refer to the new definitions in the C'wlth Act and provide uniformity of interpretation.

Other definitions which refer to definitions in the C'wlth Act are: "advertisement"; "approved advertisement"; "computer game"; "film"; "determined markings"; "publication" and "submittable publication".

The Bill inserts definitions of "Deputy Director" and "Director" into the *Censorship Act 1996* to refer to senior officers who serve on the Classification Board which is established under the C'wlth Act.

Definitions are also inserted into the *Censorship Act 1996* for the "Board" and the "Review Board" established by the C'wlth Act.

The Bill inserts definitions of "international flight" and "international voyage". The *Censorship Act 1996* is amended to ensure that the definition of "place" does not include a vessel on an international voyage or an aircraft on an international flight.

There is also a new definition "Registrar" which will replace that of the "Secretary". Because the Bill

repeals those provisions which referred to the Censorship Advisory Committee, the position of “Secretary” has been abolished.

Clause 6 - Section 6 replaced

Section 6 is repealed and a new section inserted so that the *Censorship Act 1996* does not apply to services which are covered by the *Broadcasting Services Act 1992* (C’wlth) or exempt films or computer games.

“Exempt films” and “exempt computer games” are defined in the C’wlth Act (as amended 22 March 2001), section 5B. They include business, accounting, professional, scientific, educational, current affairs, hobbyist, sporting, family, live performances, musical presentation, religious or cultural films; and business, accounting, professional, scientific and educational computer games.

Clause 7 - Parts 2, 3, 4, 5, and 6 repealed.

This clause provides for the repeal of Parts 2, 3, 4, 5 and 6 of the *Censorship Act 1996*. This is necessary because the classification of publications, films and computer games will now be carried out under the C’wlth Act and WA will adopt those classifications. These repealed parts previously mirrored the Commonwealth’s classification and reclassification processes and procedures for publications, films and computer games.

Clause 8 - Section 57 amended

This clause has three effects.

- It deletes a reference to section 15(4) of the *Censorship Act 1996* which has been repealed.
- It deletes the reference to restricted and unrestricted publications and refers instead to publications that are classified Unrestricted, Category 1 restricted or Category 2 restricted. This terminology, which is used in the C’wlth Act, will now be used in the enforcement provisions in the *Censorship Act 1996*. This is necessary because of WA’s participation in the national co-operative classification scheme for publications.
- It deletes the reference to advertisements which were approved under the *Censorship Act 1996* and now refers to advertisements which are approved under the C’wlth Act.

Clause 9 - Part 7 Division 2 replaced

This division, which contained the offence provisions in regard to restricted and refused publications, will be replaced with new offence provisions which refer to submittable publications; Category 1 restricted; Category 2 restricted and publications classified RC. These are terms which are used in the national classification scheme for publications.

Division 2 - Publications

61. Sale or supply of submittable or RC publications

Proposed section 61(1) prohibits the sale or supply of a submittable publication or a publication classified RC . It will be a defence to a prosecution, under proposed sections 61(2) & (3), to prove that the publication had subsequently been classified as Unrestricted or that the defendant believed on reasonable grounds that the publication was not a submittable publication or a publication classified RC. The sale and distribution of this material is a serious offence. Therefore, the penalty is \$15 000 or imprisonment for 18 months.

62. Possession or copying of RC publications

Proposed section 62 creates an offence of possession or copying of a publication classified RC. The penalty is \$10 000.

63. Possession or copying of submittable publications with intention of selling

Proposed section 63 sets out the offences for persons who possess or copy submittable publications for the purpose of sale. The objective is to encourage sellers and publishers of adult publications to have them classified so they can be marketed in accordance with the Act. This is a serious offence. Therefore, the penalty is \$15 000 or imprisonment for 18 months.

A defence is available under proposed section 63(2) where it is proved that since the commission of the alleged offence, the publication has been classified Unrestricted.

Under proposed section 63(3), evidence that a person had made 10 or more copies of a submittable publication will be proof, in the absence of evidence to the contrary, that the person intended to sell the publications.

64. Category 1 restricted publications

Proposed sections 64(1) & (2) require that the sale and display of Category 1 restricted publications be done in premises registered with the Registrar by a registered person. The penalty for breaching the terms and conditions for the sale of Category 1 restricted publications is \$2 000.

Under proposed section 64(3), evidence that a person had 10 or more copies of a publication classified Category 1 restricted will be proof, in the absence of evidence to the contrary, that the person intended to sell the publications.

Another requirement under proposed section 64(4) for the sale of a category 1 restricted publication is that it be sold in proper wrapping and for both the publication and the wrapper to show the determined markings. The penalty for non compliance is \$2 000.

Proposed section 64(6) allows a period of 30 days for the seller or supplier to place new determined markings on the publication if it has been reclassified or its classification is revoked.

65. Category 2 restricted publications

Proposed sections 65(1) & (2) require that the sale and display of Category 2 restricted publications be done in premises registered with the Registrar by a registered person. The penalty for breaching the terms and conditions for the sale of Category 2 restricted publications is \$5 000.

Under proposed section 65(3), evidence that a person had 10 or more copies of a publication classified Category 2 restricted will be proof, in the absence of evidence to the contrary, that the person intended to sell the publications.

Proposed sections 65(4), 65(5) and 65(6) provide that Category 2 restricted publications can only be sold to persons who requested them and they must in proper packaging. The penalty for non compliance is \$5 000.

Proposed section 65(7) allows a period of 30 days for the seller or supplier to place new determined markings on the publication if it has been reclassified or its classification is revoked.

65A. Sale or supply of publications contrary to conditions

Proposed section 65A makes it an offence for a person to sell an Unrestricted or Category 1 restricted publication unless the publication complies with conditions imposed upon its sale. The penalty is \$5 000.

65B. Consumer advice for Unrestricted publications

Proposed section 65B provides that a person may not sell an Unrestricted publication unless the publication or its packaging bears consumer advice determined by the Classification Board. The penalty is \$2 000.

65C. Misleading or deceptive markings

Proposed sections 65C(1) & (2) create two offences:

- The sale of an unclassified publication which bears a marking or in packaging which indicates that it has been classified.
- The sale of a classified publication with a marking or in packaging which indicates that the publication is unclassified or has a different classification. The penalties are \$5 000.

Proposed section 65C (3) allows the seller 30 days in which to place new markings on the publication if it is reclassified or its classification is revoked.

65D. Sale of restricted publications to minors

Proposed section 65D(1) prohibits a person from selling or supplying a Category 2 restricted publication to a minor. The penalty is \$15 000 or imprisonment for 18 months.

Proposed section 65D(2) makes it an offence for a person to sell or supply a Category 1 restricted publication to a minor unless the person selling or supplying the publication is the parent or guardian of the minor. The penalty is \$5 000.

Proposed section 65D(3) provides a defence to a prosecution under proposed sections 65D (1) & (2) if the minor produced “acceptable proof of age” to the defendant and the defendant believed on reasonable grounds that the minor was an adult.

Proposed section 65D(4) provides a defence to proposed sections 65D(1) & (2) if supply took place in the course of the minor’s employment. This recognises circumstances where minors may be employed in registered premises(eg newsagencies).

Proposed section 65D(5) makes it an offence, with a fine of \$200, for a minor 15 years or older to buy a Category 1 restricted or Category 2 restricted publication knowing that they are so classified.

65E. Leaving publications in certain places

Proposed section 65E(1) provides that it will be an offence to leave a submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC in a public place or to display these publications in a public place. The penalty is \$10 000.

Category 1 and 2 restricted publications should not be placed on public display where they might be seen by persons in a public place. Registered premises will continue to take two basic forms: “adult” shops which restrict access to persons over 18 and general stores such as newsagencies and petrol stations. Proposed section 65E is intended to ensure that registered premises which do not exclude minors do not display Category 2 restricted publications.

Proposed section 65E(2) provides a defence:

- Where it is proved since the commission of the alleged offence, the publication has been classified Unrestricted.
- Where it is proved that the defendant believed on reasonable grounds that the publication was not a submittable publication, or a Category 1 or 2 restricted publication or RC.
- Where it is proved that a publication classified Category 1 restricted was displayed in a registered premises and was marketed with proper packaging in accordance with proposed section 64(4).
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- Where it is proved that a publication classified Category 2 restricted was on display but could not be seen from outside the premises or by a minor in the premises.

Proposed section 65E(3) makes it an offence for a person to leave a submittable publication, or a publication classified Category 1 restricted or Category 2 restricted, or RC in private premises without the consent of the occupier. The penalty is \$5 000.

Proposed section 65E(4) provides a defence to a prosecution for leaving a submittable publication on private premises, where it is proved since the commission of the alleged offence the publication has been classified Unrestricted.

Proposed section 65E(5) provides a defence to proposed section 65E(3) where it is proved that the defendant believed on reasonable grounds that the publication was not of the kind mentioned in proposed section 65E(3).

Clause 10 - Section 76 amended

Proposed section 76 (4) makes allowance for the reclassification of or the revocation of the classification or consumer advice for films. This will now be carried out under the relevant sections of the C'wlth Act. When this occurs the film can continue to display the original markings and consumer advice for up to 30 days after the reclassification. Subsequently, the film must show the markings and consumer advice relevant to the reclassification or revocation.

Clause 11 - Section 78 amended

Proposed section 78 has been redrafted to correct the ambiguity in its original language relating to the display of an R film for the purpose of sale or rental. The Bill clarifies the intent of section 78 so that it will be an offence to display the film for sale unless the film and its wrapping or casing is displayed in a place set aside as an area for displaying R films and their containers.

Clause 12 - Section 79 amended

Proposed section 79(6) creates a new offence dealing with persons who supply X or RC films to a minor. Previously, section 79 only contained offences for the supply of MA and R films to a minor.

The supply of this material to a minor is a serious matter. Therefore the penalty is \$15 000 or imprisonment for 18 months.

Clause 13 - Section 86 amended

Proposed sections 86(4) & (5) are new provisions which create an offence for a person to allow a coin operated arcade computer game to be played unless it displays the determined markings and consumer advice on the device used for playing the game. The clause also requires that where two or more games can be played on a device, the determined markings and consumer advice on the device must indicate the game with the highest classification. The penalty for an offence against proposed section 86(4) is \$5000.

Proposed section 86(6) makes allowance for the reclassification of or the revocation of the classification or consumer advice for computer games. This will now be carried out under the C'wlth Act. The computer game can continue to display the original markings and consumer advice for up to 30 days after the reclassification. Subsequently, the computer game must show the markings and consumer advice relevant to the reclassification.

Clause 14 - Section 88 amended

Proposed section 88(2) is a new provision which creates an offence for a person to supply an RC computer game to a minor. Previously, section 88 only contained an offence for a person, other than a parent or guardian, who supplied an MA (15+) computer game to a minor.

The sale of RC material to a minor is a serious offence. Therefore, the penalty is \$15 000 or imprisonment for 18 months.

Clause 15 - Section 90 amended

Section 90(1) will be amended to include an offence of publishing an unapproved advertisement for a publication. Previously, this section only applied to films and computer games, The provision will now refer to publications. This is necessary because of WA's entry into the national scheme for publications.

Proposed section 90(2) will repeal the former definition of an "unapproved advertisement" which referred to sections in the *Censorship Act 1996*. A new definition is inserted which refers to the relevant sections of the C'wlth Act.

Clause 16 - Section 91 amended

Section 91(1) of the *Censorship Act 1996* will be amended so that section 33 of the C'wlth Act, which enables the Commonwealth Classification Board to grant a certificate of exemption, is now referred to instead of section 44 of the *Censorship Act 1996*, which will be repealed. That is, exemption certificates will now be granted under the C'wlth Act and not under the State Act. In addition to existing offences for films and computer games, section 91 will also be amended to make it an offence for publishing an advertisement for a submittable publication or a publication classified RC. This is necessary because WA will be a participant in the national classification scheme for publications.

Clause 17 - Section 96 amended

Sections 96(1) &(2) of the *Censorship Act 1996* will be amended to include an offence for the publishing of an illegal advertisement for a classified publication that does not include any markings which are determined under section 8 of the C'wlth Act. Previously section 96 only applied to films and computer games. However, section 96 will now refer to publications. This is necessary because of WA's entry into the national classification scheme for publications.

Section 96(2) will be amended to define an "illegal advertisement" as an advertisement which does not show the determined markings or consumer advice for the classified publication, film or computer game or an advertisement which is published in a form different from that approved by the Director under the C'wlth Act.

To make allowance for the impact of reclassification on advertising material, section 96(3) will be amended to provide that where a film, publication or computer game is reclassified under the C'wlth Act, or had its classification revoked, the advertisement can continue to display the original markings and consumer advice for up to 30 days after the reclassification. Subsequently, all relevant advertising will have to include the markings and consumer advice relevant to the reclassification.

Clause 18 - Section 97 amended

Sections 97(1) & (2) will be amended to create an offence of publishing an advertisement which suggests that an unclassified publication, film or computer game is in fact classified or that a classified publication, film or computer game is either unclassified or has a different classification. Previously section 97 only applied to films and computer games. However, section 97 will now apply to publications. This is necessary because of WA's entry into the national classification scheme for publications.

To make allowance for the impact of reclassification on advertising material, section 97(3) has been amended to provide that where a film, publication or computer game is reclassified under the C'wlth Act, or had its classification revoked, the advertisement can continue to display the original markings and consumer advice for up to 30 days after the reclassification. Subsequently, all relevant advertising will have to include the markings and consumer advice relevant to the reclassification.

Clause 19 - Section 97A inserted

Proposed section 97A prohibits a person from displaying a notice that Category 1 restricted or Category 2 restricted publications are available from the premises unless that person is registered and the notice is approved by the State Minister. The penalty \$5 000.

A defence is available under proposed section 97A (3) if the defendant can prove that the advertisement was in good faith for the sole purpose of informing industry participants.

Clause 20 - Section 98 amended

Sections 98(1) & (2) will be amended to create an offence to publish a publication containing advertisements for publications, films or computer games unless the publication also includes a list of all the classification symbols and markings for those items. Previously, section 98 only applied to films and computer games. It will now apply to publications. This is necessary due to WA's entry into the national classification scheme for publications.

Clause 21 - Section 99 amended

Section 99 will be amended so that the reference to "refused publication" in the definition of "objectionable material" is changed to "publication classified RC". This is consistent with the national terminology used in the classification of publications. This is necessary due to WA's entry into the national classification scheme for publications.

Clause 22 - Part 7A inserted

A new part 7A is inserted into the *Censorship Act 1996*.

Proposed section 102A empowers the Director of the Commonwealth Classification Board or the State Minister to require a publisher to submit an application for classification of a particular publication or subsequent issues of the publication if there are reasonable grounds to believe that it will be published in Western Australia. Notices of the resulting classification decisions must be published in the relevant Commonwealth or State Gazette. Persons will have 3 business days to comply. There are defences if the person can prove that he/she did not intend to make the publication available in Western Australia. The penalty for non compliance is \$10 000.

Proposed section 102B empowers the Director of the Commonwealth Classification Board or the State Minister to require a publisher of an unclassified film, which is not an exempt film, to submit an application for classification of the film if there are reasonable grounds to believe that the film will be published in Western Australia. Notices of the resulting classification decisions must be published in the relevant Commonwealth or State Gazette. Persons have 3 business days to comply. There are defences which may be exercised if the person can prove that he/she did not intend to make the film available in Western Australia. The penalty for non compliance is \$10 000.

Proposed section 102C empowers the Director of the Commonwealth Classification Board or the State Minister to require the publisher of a computer game to submit an application for classification for a computer game if there are reasonable grounds to believe that the game is likely to contain contentious material and that it will be published in Western Australia. Notice of the resulting classification decision must be published in the relevant Commonwealth or State Gazette. Persons have 3 business days to comply. There are defences which may be exercised if the defendant can prove that he/she did not intend to publish the game in Western Australia. The penalty for non compliance is \$10 000.

Proposed section 102D empowers the Director of the Commonwealth Classification Board or the State Minister to require the publisher of an advertisement for a submittable publication, film or computer game to submit a copy of the advertisement for approval if there are reasonable grounds to believe that the publication, film or computer game is to be published in Western Australia. Persons have 3 business days to comply. There are defences which may be exercised if the defendant can prove that he/she did not intend to publish the items in Western Australia. The penalty for non compliance is \$10 000.

Proposed section 102E empowers the Director of the Commonwealth Classification Board or the State Minister to require the publisher of a publication, film or computer game to submit a copy of the item for the purpose of reclassifying it. Persons have 3 business days to comply. It is a defence to a prosecution if the person can prove that he/she did not have a copy of the publication, film or computer game. The penalty for non compliance is \$10 000.

Proposed section 102F empowers the Director of the Commonwealth Classification Board or the State Minister to obtain a copy of a publication, film or computer game from the original applicant for a review of a classification decision where the application for the review is made by a person who was not the original applicant. Persons have 3 business days to comply. It is a defence to a prosecution if the defendant proves that he/she did not have a copy of the publication, film or computer game. The penalty is \$10 000.

Clause 23 - Section 104 amended

Section 104(1)(e) will be amended by deleting the reference to “censor and appeal censor”. These are terms not in the *Censorship Act 1996* because they will be replaced with the term “Director”. This is necessary because it is the Director of the Commonwealth Office of Film and Literature Classification who will be the censor.

Clause 24 - Section 105 amended

Section 105(1) will be amended by deleting the reference to “censor”. This is a term not in the *Censorship Act 1996* because it will be replaced with the term “Director”. This is necessary because it is the Director of the Commonwealth Office of Film and Literature Classification who will be the censor. The section will also be amended to give the Director the power to also exempt publications from the operation of the *Censorship Act 1996*. This is necessary because of Western Australia’s entry into the national classification scheme for publications.

Clause 25 - Section 106 amended

Sections 106(1) & (3) will be amended so that they now refer to the “Director” instead of the “censor” for the reasons outlined above.

Clause 26 - Section 107 amended

This section will be amended so that it now refers to the “Director” instead of the “censor” for the reasons outlined above.

Clause 27 - Section 108 amended

This section will be amended so that it now refers to the “Director” instead of the “censor” for the reasons outlined above. The term “appropriate Gazette” is replaced by Commonwealth Gazette because it is that Gazette in which the Director will place notices.

Clause 28 - Section 109 amended

Section 109(1) will be amended so that it now refers to the “Director” instead of the “censor” for the reasons outlined above.

In section 109(3) the reference to the “censor” will be removed because the State Minister has a general power of exemption. Therefore, there is no need to empower the State Minister to exercise a power conferred on the censor.

Clause 29 - Section 110 amended

Section 110(c) will be amended so that it refers to terms for publications which are used on a national basis. This is necessary because of Western Australia’s entry into the national classification scheme for publications.

Clause 30 - Division heading inserted

This clause inserts a new heading “ Division 1 - General matters”.

Clause 31 - Section 116 amended

Section 116(1) will be amended to also allow a prosecution for offences to commence in relation to publications, films and computer games which have not been classified at the time of the alleged offence where the defendant, by notice, agrees that the item would have been the classification agreed to between the prosecution and the defence. The amendment will expedite proceedings and save costs where the defendant does not dispute what a classification of the material would be.

Clause 32 - Section 117 amended

Proposed section 117(2a) will allow X or RC material or child pornography, which has been lawfully seized, to be forfeited to the Crown where no one has been charged with an offence in relation to the seized material after 1 year.

Section 117(3) sets out a procedure whereby things seized under section 112 or in accordance with a search warrant may be forfeited to the Crown even when no one is charged with an offence. In such circumstances, the police or an authorised person are required to apply to a justice within 60 days of the thing being seized for the issue of a summons to an occupier of the premises from which the thing was seized. The section will be amended so that this requirement will not extend to seized X or RC material or child pornography.

Clause 33 - Sections 117A and 117B inserted

This clause inserts new sections 117A and 117B. It will provide that if proceedings are commenced for specified offences under the *Censorship Act 1996* relating to products that were seized on the same day from the same premises and 10 or more different products are forfeited to the Crown as a result of those proceedings, at the expiry of the prescribed period, any other products seized on that day from those premises are also forfeited to the Crown.

The owner of products that are subject to forfeiture under this clause may view the products and, within the prescribed period, apply to a justice for an order for return of the products. The Commissioner of Police must be notified of, and is a party to, any such proceedings.

The justice may order the return of a product if satisfied, on the balance of probabilities:

- that the product is classified at a classification other than X or RC (or, in the case of publications, is not a submittable publication or a publication classified RC); or
- that a specified offence was not committed in relation to the product.

Proposed section 117B will provide a procedure whereby a person charged with an offence may apply to have the seized item classified. The prosecution must forward the person's application for classification to the Classification Board, but may refuse to do so until all fees associated with the application are given to the prosecution.

Clause 34 - Part 9 Division 2 inserted

This clause inserts a new heading "Division 2 - Infringement notices"

Proposed sections 117C - 117J provide for designated persons to be appointed by the State Minister and for those persons to be able to issue infringement notices for minor offences under the *Censorship Act 1996*.

The provisions in proposed sections 117C - 117J are similar to provisions in other WA legislation which deals with infringement notices.

Clause 35 - Part 10 repealed

Part 10 of the *Censorship Act 1996* is repealed. This Part provided for the establishment and function of the Censorship Advisory Committee. Therefore, that committee will be abolished. This is necessary because Western Australia will become a full participant in the national classification scheme where the classification of publications, films and computer games is carried out by the Commonwealth Office of Film and Literature Classification.

Clause 36 - Section 128A inserted

Proposed new section 128A will enable the State Minister to appoint a State public servant as the Censorship Registrar for the purposes of carrying out functions under the *Censorship Act 1996*.

Clause 37 - Section 129 amended

This clause will amend section 129 by deleting the reference to “restricted publications” and replacing it with “publications classified Category 1 restricted or Category 2 restricted”. These are the new terms to be used when referring to publications which are restricted. This is necessary due to Western Australia becoming a participant in the national censorship scheme for publications.

Clause 38 - Section 141 repealed and sections 141 and 141A substituted

In relation to prosecutions for offences, proposed new section 141 will:

- enable the Commonwealth Director or Deputy Director of the Classification Board to give a certificate that a film, publication or computer game is or is not classified or an advertisement has or has not been approved;
- enable the Commonwealth Director or Deputy Director of the Classification Board to give a certificate that a classified film or computer game is modified in a specified manner; and
- provide that that certificate will be proof of those facts unless the contrary is proved.

Former section 141 referred to actions carried out by the “Secretary” and the “censor”. Both are terms which will no longer be longer referred to due to Western Australia’s full participation in the national classification scheme.

Under proposed new section 141A (1), if a person is charged with an offence under the *Censorship Act 1996* in relation to a film, publication or computer game, the prosecution may prior to the trial give the defendant a notice:

- containing details of the material and the offence;
- stating that the defendant may view the material;
- inviting the defendant to agree that on a specified date that the publication, film, or computer game was:
 - (i) classified;
 - (ii) unclassified but would, if classified, have been of the specified classification;
 - (iii) or was unclassified.
- stating that if the defendant does not agree with the above in the specified time set out in the notice, the defendant will, if found guilty of the offence, be liable to pay an amount set out in the notice.

Under proposed section 141A(2), this section does not apply to unclassified material which would be classified other than X or RC.

In relation to a prosecution for an offence under the *Censorship Act 1996*, proposed section 141A(4) provides that such a notice signed by the defendant will constitute proof of the matter so agreed unless the contrary is proved.

Under proposed section 141A(5), if a person fails to complete and return a notice within the specified time and the person is found guilty of the offence set out in the notice, the prosecution may recover an amount set out in the notice from the defendant.

Proposed section 141A(6) provides that a certificate signed by the Commissioner of Police that a person was served with such a notice and did not return it within the specified time is evidence of the fact unless the contrary is proved.

Proposed section 141A(7) provides that if a person fails to complete and return the notice within the specified time and the publication, film or computer game is subsequently classified at a higher classification than the one specified in the notice, this section applies as if such notice had specified the higher classification.

Proposed section 141A(8) will define the “prescribed period”

Clause 39 - Various references to “Secretary” amended

This clause will delete the reference to the term “Secretary” in the sections set out in the Table. This is necessary because this position will no longer apply due to the abolition of the Censorship Advisory Committee. It will be replaced with the term “Registrar” who is the person responsible for maintaining the details of premises registered to sell Category 1 restricted or Category 2 restricted publications.

Clause 40 - Provisions repealed

This clause repeals those sections of the *Censorship Act 1996* which are no longer applicable. This is necessary due to Western Australia’s full participation into the national co-operative censorship scheme. The specific sections to be repealed are:

- Sections 67(2), 75(2) and 83(2) referred to “approved form”. This term is now included in clause 4 of the Bill and means a form approved by the Director and published in the C’wlth Gazette.
- Section 137 referred to a task carried out by the Secretary to provide a list of classified publications. That will no longer be necessary as publications will now be classified by the Commonwealth Office of Film and Literature Classification and details of classification decisions may be obtained from that Office’s web site.

Section 138 allowed the Western Australian Minister to set aside or vary classification decisions for films or computer games and approvals for advertisements. With the development of the national classification system and the support in its integrity expressed by all State and Territory Ministers, this power is no longer required.

- Section 139 provided for a film exhibitor to refuse to exhibit an R film despite any contractual arrangement. It was originally included in the *Censorship of Films Act 1947* (WA) in 1971 because “restricted” films would exclude a large portion of the usual film audience. This is no longer a valid reason as R films have been widely available in Australia since 1971. Also, the structure of the industry has changed with the introduction of multi cinema complexes. Recent advice received from theatre operators indicates that the theatres may pick and choose what films they wish to screen. There is no equivalent of this section in the other jurisdictions.
- Sections 142(1)(b), (c), (e) and (f) protect a nominated range of persons from civil or criminal liability. The amendment will remove reference to “the censor and appeal censor”(terms which no longer apply) and members of and assistants to the Censorship Advisory Committee, which will be abolished.
- Schedule 1 of the *Censorship Act 1996* contained the provisions relating to the operation of the Censorship Advisory Committee, which will be abolished.

Clause 41 - Various penalties amended

This clause lists the new penalties which will now apply. The new penalties conform with the State Government’s policy on imprisonment. Also, where appropriate, the penalties are similar to those in other jurisdictions. The new penalties are consistent with section 40(5) of the *Sentencing Act 1995*.

PART 3 - OTHER AMENDMENTS, TRANSITIONAL & SAVINGS PROVISIONS

Clause 42 - *Criminal Code* amended

This clause amends the terminology in the *Criminal Code* so that it is consistent with that used in the national classification scheme.

Clause 43 - *Constitution Acts Amendment Act 1899* amended

This clause deletes the reference to the Censorship Advisory Committee in Part 3 of Schedule V of the *Constitution Acts Amendment Act 1899*.

Clause 44 – Co-operative Schemes (Administrative Actions) Act 2001 amended

Clause 44 amends the above Act to expressly include within that Act the *Censorship Act 1996*. The effect of this will be to retrospectively validate administrative actions carried out by Commonwealth Officers under the *Censorship Act 1996* pursuant to the co-operative arrangements between the Commonwealth and Western Australia for the classification of films and computer games. This deals with the implications raised by the *Hughes’* case relating to the validity of those actions taken by Commonwealth Officers.

Clause 45 - Transitional and savings provisions: publications

Clause 45(1) provides for publications currently classified “unrestricted” under the *Censorship Act 1996* to be unrestricted publications under the Commonwealth Act if those publications have not been classified under the Commonwealth Act.

Clause 45(2) provides that where publications have been classified as “restricted” under the *Censorship Act 1996*, but not classified under the Commonwealth Act, they will be deemed classified as Category 2 restricted until they are classified under the Commonwealth Act.

Clause 45(3) provides that where publications are classified as “refused” under the *Censorship Act 1996* but not classified under the Commonwealth Act, they will be deemed publications classified RC under the Commonwealth Act until they are classified under that Act.

Clause 45(4) allows sellers of publications 3 months to wrap and mark their stock so it bears the determined markings. This is to take into account that some retailers in WA will have large stocks of restricted publications classified under the *Censorship Act 1996*.

Clause 45(5) deems a person who is registered under the *Censorship Act 1996* to be registered for the purpose of selling publications classified Category 1 restricted and Category 2 restricted.

Clause 46 - Transitional and savings provisions: films and advertisements

Clauses 46 (1) & (2) provide that before the commencement of the amending Act, Films classified G, PG, M, MA, R, X or RC and advertisements approved or refused under the *Censorship Act 1996*; and films and advertisements which have not been classified or approved under the Commonwealth Act will be deemed to have been so classified and approved or refused under the Commonwealth Act.

Clause 46(3) deems if an exemption for an unclassified film has been given under the *Censorship Act 1996* and it is still in force, the exemption is taken to have been granted under the Commonwealth Act.

Clause 47 - Transitional and savings provisions: computer games.

This clause repeats the provisions of clause 46 and applies them to computer games classified under the *Censorship Act 1996*.

Clause 48 - Transitional: calling in, review and reclassification

Clause 48(1) provides that the calling in provisions relating to publications, films, computer games and advertisements only apply to those articles published on or after the commencement of this Act.

Clause 48(2) provides that the call in provisions for reclassification or a review of a classification decision apply to items published before or after the commencement of this Act.

Clause 49 - Transitional: offences

This clause applies proposed new section 141A to proceedings for offences commenced after the commencement of section 38 of this amending Act, whether the offences were committed before or after the commencement of section 38.