



**THIRTY-NINTH PARLIAMENT**

**REPORT 97**

**STANDING COMMITTEE ON UNIFORM  
LEGISLATION AND STATUTES REVIEW**

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

Presented by Hon Kate Doust MLC (Chair)

June 2016

# STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

## Date first appointed:

17 August 2005

## Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

### ‘6. Uniform Legislation and Statutes Review Committee

- 6.1 A *Uniform Legislation and Statutes Review Committee* is established.
- 6.2 The Committee consists of 4 Members.
- 6.3 The functions of the Committee are —
- (a) to consider and report on Bills referred under Standing Order 126;
  - (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
  - (c) to examine the provisions of any treaty that the Commonwealth has entered into or presented to the Commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;
  - (d) to review the form and content of the statute book; and
  - (e) to consider and report on any matter referred by the Council.
- 6.4 In relation to function 6.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.’

## Members as at the time of this inquiry:

Hon Kate Doust MLC (Chair)

Hon Phil Edman MLC

Hon Mark Lewis MLC

Hon Samantha Rowe MLC

## Staff as at the time of this inquiry:

John Seal-Pollard (Advisory Officer (Procedure))

Clair Siva (Committee Clerk)

Irina Lobeto-Ortega (Advisory Officer (Legal))

## Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

lcco@parliament.wa.gov.au

Website: <http://www.parliament.wa.gov.au>

ISBN 978-1-925149-65-4

# CONTENTS

<b>REPORT.....</b>	<b>1</b>
1 INTRODUCTION .....	1
Inquiry procedure.....	1
Supporting documents.....	2
Structure of the legislation .....	3
2 BACKGROUND TO THE BILL.....	3
National Classification Scheme .....	3
Commonwealth amendments .....	5
3 THE BILL.....	6
4 SPECIFIC CLAUSES IN THE BILL WHICH MAY IMPACT UPON PARLIAMENTARY SOVEREIGNTY .....	7



**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES  
REVIEW**

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

---

**1 INTRODUCTION**

- 1.1 On 7 April 2016, the Legislative Council referred the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016 (Bill) to the Standing Committee on Uniform Legislation and Statutes Review (Committee), according to Standing Order 126 of the Legislative Council's Standing Orders.
- 1.2 Standing Order 126(7) requires the Committee to report within 45 days of referral. Due to the Parliament being in recess at the conclusion of this period, the Committee was required to report to the Legislative Council by 21 June 2016, being the first sitting day following the expiry of 45 days.

**Inquiry procedure**

- 1.3 The Committee called for submissions by directly contacting seven stakeholders and advertising in *The West Australian* on Saturday 16 April 2016. The Committee did not receive any submissions. The list of stakeholders invited to make a submission are as follows:
- Department of the Attorney General
  - Department of Culture and the Arts
  - Film and Television Institute of Western Australia
  - Media, Entertainment and Arts Alliance
  - Perth International Arts Festival
  - Fringe World Festival
  - Fremantle Street Arts Festival.
- 1.4 The Committee held a hearing with the Department of the Attorney General (Department) on 9 May 2015.
- 1.5 The Committee thanks the officers of the Department for their assistance with the inquiry.
-

## Supporting documents

1.6 The Committee received the Second Reading Speech, the Explanatory Memorandum and the Bill when the Bill was introduced into the Legislative Council on 7 April 2016.

1.7 Hon Michael Mischin MLC, Attorney General, provided the Committee with the following documentation and information pursuant to Ministerial Office Memorandum MM2007/01:

- the revised co-operative legislative scheme for censorship in Australia 1995 (the IGA)
- the communique from the April 2013 meeting of the Standing Council on Law and Justice
- a statement as to any timetable for the implementation of the legislation
- the Explanatory Memorandum to the Bill
- the Government's policy on the Bill
- a statement outlining the advantages and disadvantages to the State as a participant in the relevant scheme or agreement
- an explanation of any relevant constitutional issues
- an explanation as to whether and by what mechanism the State can opt out of the scheme
- the mechanisms by which the Bill, once enacted, can be amended.<sup>1</sup>

1.8 The Committee notes Standing Order 126(5) states:

*The Member in charge of a Bill referred to the Committee shall ensure that all documentation required by the Committee is provided to the Committee within 3 working days after referral under (4).*

1.9 It is unfortunate that the documentation referred to above was forwarded to the Committee on 20 April 2016: five working days after the due date of 12 April 2016.

1.10 The Committee relies upon Ministers and their agencies to provide the Committee with supporting documentation and information for bills in a timely manner. Delay in the provision of information to the Committee can hinder the Committee's inquiry into a bill and result in inconvenience to the Legislative Council.

---

<sup>1</sup> Hon Michael Mischin MLC, Attorney General, Letter, 20 April 2016.

---

## Structure of the legislation

- 1.11 The Bill adopts Structure 2 for uniform legislation: ‘Model Legislation.’<sup>2</sup> This approach, also known as mirror legislation, involves the enactment of uniform legislation in Western Australia with local variations as necessary to achieve the agreed uniform national policy.
- 1.12 The Bill proposes amendments to the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 1996 (Act)*.<sup>3</sup>

## 2 BACKGROUND TO THE BILL

### National Classification Scheme

- 2.1 The Act forms part of the National Classification Scheme (NCS), a uniform scheme set out in an inter-governmental agreement between the Commonwealth and the States and Territories in relation to ‘*a revised co-operative legislative scheme for censorship in Australia*’ dated 28 November 1995.
- 2.2 In the Attorney General’s letter to the Committee dated 20 April 2016, the value of the NCS is explained as follows:

*After 21 years as a participant in the NCS, it is simpler to consider the advantages and disadvantages of Western Australia exiting the scheme rather than the advantages of joining it.*

*If Western Australia were to opt out of the NCS, the disadvantages would be considerable, including:*

- *a substantial administrative burden associated with setting up an entire independent classification scheme;*
- *considerable ongoing costs associated with classifying all content that will be sold, shown, or demonstrated in Western Australia;*
- *uncertainty and financial impacts for businesses that show, sell or demonstrate publications, films and computer games (including changing business processes, signage and retraining costs);*
- *lack of consistency for businesses operating in more than one State or Territory;*

---

<sup>2</sup> See Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 64, Information Report on Uniform Scheme Structures, 31 August 2011, p 17.

<sup>3</sup> Formerly the *Censorship Act 1996*: the name of the Act was changed by the *Censorship Amendment Act 2006*, upon Western Australia becoming a full participant in the NCS and ceasing to be involved in the classification of publications, films and computer games: see the Explanatory Memorandum for the *Censorship Amendment Bill 2005*, Clause 4.

- *potentially reduced consistency for businesses operating internationally;*
- *loss of access to the Commonwealth's classification tools.*

*The possible advantages of exiting the NCS would be:*

- *the potential for greater flexibility in making changes to any classification Code and/or Guidelines (as there would be no need to get agreement from all jurisdictions);*
- *the potential for greater autonomy in decision making.*<sup>4</sup>

2.3 Under the NCS, publications, films and computer games are classified by the Commonwealth Classification Board under the provisions of the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (Commonwealth Act). The enforcement of Commonwealth classification decisions is a matter for the individual States and Territories and in Western Australia is carried out by the Western Australia Police under the Act.

2.4 Successive Western Australian Parliaments have enacted amendments to the Act since the commencement of the NCS in 1996.<sup>5</sup>

2.5 The Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012 (2012 Bill), was the subject of a report tabled by this Committee following referral by the Legislative Council in September 2012. The purpose of the 2012 Bill was to give effect to the Commonwealth's new R 18+ classification for computer games in Western Australia.

2.6 At an April 2013 meeting of the Standing Council on Law and Justice (SCLJ), classification ministers discussed a number of recommendations of the Australian Law Reform Commission's Final Report into the NCS. The SCLJ agreed that reform of the NCS should be carried out in stages, beginning with a first tranche of reforms (of which this Bill forms a part) to be implemented in the short term under the current scheme.<sup>6</sup> The SCLJ identified that the broad aim of these reforms was:

*to improve the effectiveness and efficiency of the NCS by streamlining classification requirements and assisting industry to better comply with classification laws.*<sup>7</sup>

---

<sup>4</sup> Hon Michael Mischin MLC, Attorney General, Letter, 20 April 2016, p 2.

<sup>5</sup> *Censorship Amendment Act 2003, Criminal Procedure and Appeals (Consequential Provisions) Act 2004, Courts Legislation Amendment and Repeal Act 2004, Censorship Amendment Act 2006, Child Pornography and Exploitation Material and Classification Legislation Amendment Act 2010 and Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2012.*

<sup>6</sup> Standing Council on Law and Justice – Communique, Canberra, 4 April 2013, p 1.

<sup>7</sup> Classification Review Board, *Classification Board and Classification Review Board Annual Report 2012-13*, 2013, p 14.



- 2.7 As the Commonwealth plays the primary role in classification regulation, the reforms required substantial amendments to the Commonwealth Act, and largely administrative amendments to the Western Australian Act.

### **Commonwealth amendments**

- 2.8 The Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014 (Cth) (Commonwealth Bill) was introduced into the House of Representatives on 19 March 2014 and was assented to on 11 September 2014. The purpose of the Commonwealth Bill was to introduce changes to provide consumers with more classification information and to simplify the scheme by removing complexity and reducing costs for business.<sup>8</sup> During Hon Michael Keenan MP, Minister for Justice's second reading speech the need for reform was explained as follows:

*Apart from the introduction of an R18+ classification for computer games, the National Classification Scheme has not had any significant changes made to it since it was established in 1996. Yet, since its introduction, classifiable content and the way in which it is delivered to consumers has changed dramatically. For example, consumers now have ready access to classifiable content on a variety of platforms, such as the delivery of computer games on mobile and other online devices.<sup>9</sup>*

- 2.9 The *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014* (Cth):

- broadened the scope of existing exempt film categories and streamline exemption arrangements for festivals and cultural institutions
- enabled certain content to be classified using classification tools (such as online questionnaires that deliver automated decisions)
- created an explicit requirement in the Commonwealth Act to display classification markings on all classified content
- expanded the exceptions to the modifications rule so that films and computer games which are subject to certain types of modifications do not require classification again
- enabled the Attorney-General's Department to notify law enforcement authorities of potential Refused Classification content without having the

---

<sup>8</sup> Hon Michael Keenan MP, Minister for Justice, House of Representatives, Parliamentary Debates (Hansard), 19 March 2014, p 2383.

<sup>9</sup> *ibid.*

content classified first, to help expedite the removal of extremely offensive or illegal content from distribution.<sup>10</sup>

### 3 THE BILL

3.1 The Bill represents the first phase of NCS reform and is largely administrative in nature. The Committee notes that more substantive changes to the Act can be expected as the Commonwealth, in consultation with the SCLJ, proceed with ongoing reform of the NCS.

3.2 The amendments contained in the Bill are summarised as follows:

- Exemptions: Sections 6 and 18 to 21 propose to remove non-operational provisions regarding exemption applications being made to the Director of the Commonwealth Classification Board and to facilitate the new system of conditional cultural exemptions. Under the new provisions, festivals and cultural institutions will self-assess their eligibility for an exemption under uniform arrangements set out in the Commonwealth Act.

- The Committee asked the Department to clarify the approach taken to ensure safeguards that are currently in place for the protection of the public, particularly children, are maintained when unclassified material is shown at festivals and cultural institutions under the new exemption regime. The Department in its evidence to the Committee, confirmed that:

*Ms Groenewold: ... the relevant material—the film, generally—may become subject to a conditional cultural exemption if it is part of a registered event and the relevant material, if it were classified, would not be likely to be classified RC, X 18+ or category 2 restricted; and in the case of relevant material that, if it were classified, would be likely to be classified M or MA 15+, persons aged under 15 years are not present at the relevant showing unless accompanied by adults; and in the case of relevant material that, if it were classified, would be likely to be classified R 18+ or category 1 restricted, only persons aged 18 years and over are present.*<sup>11</sup>

- Modifications: sections 10 and 11 propose to give effect to the Commonwealth Minister for Justice’s power to prescribe modifications to films and computer games that will not automatically cause the item to become unclassified. With technological advances and rapid changes to the

---

<sup>10</sup> Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014, *Explanatory Memorandum*, House of Representatives, p 3.

<sup>11</sup> Miriam Groenewold, Senior Policy Officer, Department of the Attorney General, *Transcript of Evidence*, 9 May 2016, p 5.

kinds of modifications which are made to films and computer games, it is appropriate to include a power to make a legislative instrument for this purpose.<sup>12</sup>

- Classification Tools: sections 7 to 9, 12 and 14 to 17 propose to eliminate minor inconsistencies between State and Commonwealth legislation. The new Commonwealth provisions that allow certain content (such as mobile and online games) to be classified using classification tools largely have effect in Western Australia without the need for amendments to the Act.
- The sections above (excluding section 17) additionally propose to insert clauses to extend a grace period of 30 days during which a publication reclassified under the new classification tools may still be sold or supplied with its original markings rather than with the markings applicable to a new classification.
- Display of Markings: sections 4 and 5 propose to insert a provision into the Act to apply the Commonwealth requirements for the display of determined markings. Previously the requirement for markings to be displayed was implied rather than explicit.
- Transitional provision: section 22 proposes to insert a provision into the Act to ensure that any existing exemptions under section 105(1) or 106 of the Act will not be rendered inoperative by the repeal of those sections.

#### **4 SPECIFIC CLAUSES IN THE BILL WHICH MAY IMPACT UPON PARLIAMENTARY SOVEREIGNTY**

- 4.1 In its analysis of the Bill, the Committee has not identified any clauses that impact upon Parliamentary sovereignty.

**Recommendation 1: The Committee recommends that the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016 be passed.**




---

**Hon Kate Doust MLC**

**Chair**

**21 June 2016**

---

<sup>12</sup> Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014, *Explanatory Memorandum*, House of Representatives, p 31.