

CHILD PORNOGRAPHY AND EXPLOITATION MATERIAL AND CLASSIFICATION LEGISLATION AMENDMENT BILL 2009 (WA)

EXPLANATORY MEMORANDUM

Overview of the Bill

The Child Pornography and Exploitation Material and Classification Legislation Amendment Bill 2009 (WA) (the Bill) amends the *Criminal Code* (the Code), and the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA) (the WA Enforcement Act).

The Bill amends the Code to provide that legislative provisions in relation to child exploitation material (previously referred to as child pornography) are transferred from the WA Enforcement Act and inserted into the Code.

The Bill amends the WA Enforcement Act to incorporate relevant Commonwealth amendments which affect the operation of the National Cooperative Classification Scheme (NCCS).

Western Australia, with the Commonwealth and other States and Territories, is a full member of the NCCS.

Other States and Territories have amended their enforcement legislation to take account of the *Classification (Publications, Films and Computer Games) Amendment Act 2007* (Clth), which came into effect on 15 March 2008. Also, they have amended their enforcement legislation to take account of the *Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008* (Clth), which came into effect on 1 July 2009.

PART 1 – PRELIMINARY

Clause 1 – Short Title

Clause 1 provides that the title of the proposed Act is the *Child Pornography and Exploitation Material and Classification Legislation Amendment Act 2009* (WA).

Clause 2 – Commencement

Clause 2 provides that sections 1 and 2 will come into operation on the day that the Act receives Royal Assent. The balance of the Act will commence on a day fixed by proclamation, and different days may be fixed for different provisions.

PART 2 – CHILD EXPLOITATION MATERIAL OFFENCES

Division 1 – The *Criminal Code* amended

Clause 3 – The *Criminal Code* amended

Clause 3 provides that Division 1 of the proposed Act amends the *Criminal Code*.

Clause 4 – Part IV Chapter XXIV inserted

Clause 4 proposes to insert a new “Chapter XXIV – Child exploitation material” into the Code. This new Chapter contains proposed new sections 216, 217, 218, 219, 220, 221A and 221B which deal with the matters set out below.

Section 216 – Terms used in this Chapter

Proposed section 216 defines the terms in new Chapter XXIV.

A *child* is defined as a person under 16 years of age. This preserves the under 16 threshold as to whether material will fall within the new definition of *child exploitation material*.

The proposed new definition of *child exploitation material* is more expansive than the existing definition of *child pornography* in section 3 of the WA Enforcement Act because it includes other forms of abuse, such as cruelty or torture, (whether or not in a sexual context); and also refers to material which describes or depicts “part of a person” as well as a person. This is consistent with the national approach to increase uniformity of child pornography/child exploitation offences in Australia.

Importantly, while the new terminology reflects the wider scope of the new offences, the term *child pornography* has been retained in the definition of *child exploitation material* as it is widely understood throughout the community.

Child pornography means material that, in a way likely to offend a reasonable person, describes, depicts or represents a person, or part of a person, who is, or who appears to be a child engaging in sexual activity; or in a sexual context.

Material includes any object, picture, film, written or printed matter (which would include a publication), data, other thing and anything from which text, pictures, sound or data can be obtained.

Picture has the meaning as in existing section 204B of the Code and includes an image, whether or not it is a computer generated image.

Section 217 – Involving a child in child exploitation

Proposed section 217(1) provides that a person involves a child in child exploitation if the person invites, causes, procures or offers a child for the purposes of producing child exploitation material.

Proposed section 217(2) creates a new criminal offence of involving a child in child exploitation with a penalty of 10 years imprisonment.

Section 218 – Production of child exploitation material

Proposed section 218 creates a new criminal offence for a person who produces child exploitation material with a penalty of 10 years imprisonment.

Section 219 – Distribution of child exploitation material

Proposed section 219(1) defines the term *distribute* for the purposes of section 219. “Distribute”, while including the existing offences of disseminating child exploitation material such as sell or supply, display or exhibit in sections 60(1)(b) and 60(3) of the WA Enforcement Act, has been expanded to include electronic dissemination of this material, or entering into of any arrangement to do so.

Proposed section 219(2) provides that a person is liable to imprisonment for 10 years if found guilty of distributing child exploitation material. Current penalties under sections 60(1)(b) and 60(3) of the WA Enforcement Act (to be deleted by clause 9 of this Bill) are imprisonment for 7 years and 5 years.

The existing offence for transmission of objectionable material (which includes child pornography) by a computer service is in section 101 of the WA Enforcement Act and the penalty is a fine of \$15,000 or 18 months imprisonment.

Proposed section 219(3) creates a new criminal offence of possession of child exploitation material with the intention of distributing that material. The penalty, if found guilty, is 10 years imprisonment. The current penalty for a similar offence under section 60(1)(a) of the WA Enforcement Act (to be deleted by clause 9 of this Bill) is 7 years imprisonment.

Section 220 – Possession of child exploitation material

Proposed section 220 creates a new criminal offence of possessing child exploitation material with a penalty of 7 years imprisonment. The current penalty in section 60(4) in the WA Enforcement Act (to be repealed by clause 9 of this Bill) is 5 years imprisonment.

Section 221A - Defences and exclusions for sections 217, 218, 219 or 220

Proposed section 221A sets out defences and exclusions in relation to the proposed section 217, 218, 219 or 220 offences.

Proposed section 221A (1A) provides that it is no defence to a charge under the proposed child exploitation material offences in sections 217, 218, 219 or 220 to prove that the accused did not know the age of the child to whom the charge relates, or believed the child was over the age of 16.

Proposed section 221A(1)(a) provides a defence if the accused proves that the material to which the charge relates was classified, other than a refused classification (RC), under the *Classification (Publications, Films and Computer Games) Act 1995* (Clth) (the Clth Act). This defence exists in other jurisdictions and replicates the similar defence under section 57 of the WA Enforcement Act.

Proposed section 221A(1)(b) provides a defence if the accused proves they did not know, and could not have been reasonably expected to have known, that the material to which the charge relates depicts a person or part of a person in a way likely to offend a reasonable person. This defence exists, with some variations, in other jurisdictions.

Proposed section 221A(1)(c) provides a defence if the accused proves that the material to which the charge relates was of a recognised literary, artistic, medical or scientific merit and that the act to which the charge relates is justified as being in the public good. This defence exists in other jurisdictions and replicates the defence under sections 58 and 101(2) of the WA Enforcement Act so that artists, scientists, doctors and other persons are able to carry on their work for the benefit of the community.

Proposed section 221A(1)(d) provides a defence if the accused proves that they, having regard to all the circumstances concerning the material, were acting for the purpose of rendering genuine child protection or providing legal advice and that the accused's conduct was reasonable for that purpose. Other than child protection, this defence replicates section 104 of the WA Enforcement Act, and exists, with some variations, in other jurisdictions.

Proposed section 221A(2) provides a defence to a charge under section 220 (possession of child exploitation material) where the defendant proves that the material came into their possession unsolicited (eg via email) and that as soon as the defendant became aware of the nature of the material they took reasonable steps to get rid of it. This defence, with some variations, is in other jurisdictions' legislation.

Proposed section 221A(3)(a) provides that distribution or possession of child exploitation material for the purpose of law enforcement is not an offence. This replicates sections 103 and 104 of the WA Enforcement Act and is consistent with other jurisdictions' legislation.

Proposed section 221A(3)(b) provides that distribution or possession of child exploitation material for the purpose of classification under the Clth Act is not an offence. This replicates section 103 of the WA Enforcement Act and is consistent with other jurisdictions' legislation.

Proposed section 221A(4) defines a "law enforcement agency" (eg WA Police, WA Director of Public Prosecutions, the WA Corruption and Crime Commission) as well as entities of the Commonwealth, other States or Territories that carry out similar functions.

Section 221B – Forfeiture

Proposed sections 221B(1) and (2) will allow courts to order the forfeiture of material to which a charge relates under proposed sections 217, 218, 219 or 220 whether or not the person is convicted of an offence.

Proposed section 221B(3) provides that courts' powers under section 731 of the Code, which also allows courts to order destruction or disposal of property used in the commission of an offence, or the *Criminal Property Confiscation Act 2000* (WA) are not affected.

Clause 5 – Section 557K amended

Existing section 557K of the Code lists offences committed by child sex offenders.

Proposed clause 5 amends section 557(K) for three reasons.

First, clause 5 inserts a reference to new “Chapter XXIV – Child exploitation material” in the definition of a “child sex offender” in section 557K(1)(a) of the Code.

Second, clause 5 indicates that the reference currently in section 557K(1)(e) to section 60 of the WA Enforcement Act will now become a reference to the “deleted” section 60. This is to ensure that existing convictions under section 60 will not be expunged or affected by the new legislation.

Third, clause 5 substitutes “child exploitation material” for “child pornography” in section 557K(1)(f)(ii). This recognises the new definition and creation of the new and wider offences created by this new legislation.

Division 2 – *Classification (Publications, Films and Computer Games) Enforcement Act 1996* amended

Clause 6 – *The Classification (Publications, Films and Computer Games) Enforcement Act 1996* is amended.

Clause 6 provides that Division 2 amends the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA).

These amendments to the WA Enforcement Act are necessary because child pornography provisions, currently in that Act, will be transferred into the *Criminal Code* (WA).

Clause 7 – Section 3 amended

Section 3 of the WA Enforcement Act contains the definition of *child pornography*.

Clause 7 amends section 3 in the WA Enforcement Act by deleting the definition of *child pornography*. This is necessary because “child pornography” has been replaced with the new definition, *child exploitation material*, to be inserted into the Code.

Clause 8 – Part 7 Division 1 heading amended

The heading of Part 7 Division 1 of the WA Enforcement Act contains a reference to “child pornography”.

Clause 8 amends the “Part 7 Division 1” heading in the WA Enforcement Act by deleting the reference to “**articles, child pornography**” and inserting “**articles**” because matters relating to “child pornography”, to be referred to as “child exploitation material”, will be in the Code.

Clause 9 – Section 60 deleted

Section 60 in the WA Enforcement Act contains the offences and penalties relating to “child pornography”.

Clause 9 deletes section 60 in the WA Enforcement Act because offences and penalties relating to “child pornography”, to be referred to as “child exploitation material”, will be in the Code.

Clause 10 – Section 99 amended

Section 99 in the WA Enforcement Act contains the definition of “objectionable material” which includes “child pornography”.

Clause 10 deletes paragraph (b) in section 99 because paragraph (b) refers to “child pornography”, to be referred to as “child exploitation material”; and matters relating to “child exploitation material” will be in the Code.

Clause 11 – Section 116 amended

Section 116(2) of the WA Enforcement Act provides that prosecution for child pornography offences under section 60 in that Act may be commenced at any time.

Clause 11 deletes section 116(2) in the WA Enforcement Act because the prosecution for offences relating to “child pornography”, now referred to as “child exploitation material”, will be commenced under the Code; and, which, under the Code, can be commenced at any time.

Clause 12 – Section 117 amended

Section 117(2a) of the WA Enforcement Act provides for forfeiture of films classified RC or X18+, publications or computer games classified RC, or “child pornography”, seized under that Act, if no person has been charged after 12 months.

Clause 12 amends section 117(2a) by deleting the reference to “child pornography” because seizure and forfeiture of “child pornography”, to be referred to as “child exploitation material”, will be dealt with under the Code and the *Criminal and Found Property Disposal Act 2006* (WA).

Division 3 – Consequential amendments

Consequential amendments are necessary to the *Community Protection (Offender Reporting) Act 2004* (WA); *Prostitution Act 2000* (WA) and the *Working with Children (Criminal Record Checking) Act 2004* (WA) because of the transfer of “child pornography” offences, currently in the WA Enforcement Act, to be referred to as “child exploitation material” offences, into the Code.

Clause 13 – *Community Protection (Offender Reporting) Act 2004* (WA) amended

Clause 13 amends the *Community Protection (Offender Reporting) Act 2004* (WA).

This Act provides that certain offenders who commit sexual or other serious offences must keep the Police informed of their whereabouts and other personal details in order to reduce the likelihood of reoffending.

Schedule 2 of that Act contains a list of Class 2 offences, including “child pornography” to be referred to as “child exploitation material”.

Sub clause 13(2)(a) will amend the *Community Protection (Offender Reporting) Act 2004* (WA) by inserting the proposed sections 217, 218, 219 and 220 of the Code into Schedule 2.

Sub clause 13(2)(b) will amend the above Act to indicate that the reference currently in Schedule 2 to section 60 offences under the WA Enforcement Act will now refer to the “deleted” section 60 offences. This is to ensure that existing convictions under section 60 are still recognised and will not be affected by the new legislation.

Clause 14 – *Prostitution Act 2000* (WA) amended

Clause 14 amends the *Prostitution Act 2000* (WA).

Schedule 1 of this Act contains a list of offences that may be an element of a section 14 offence. For example, section 14(c) makes it an offence for a person to act as a prostitute if the person has been found guilty of an offence described in Schedule 1 including an offence under section 60 (child pornography offences) in the WA Enforcement Act.

Sub clause 14(2)(a) amends the above Act to indicate that the reference currently in Schedule 1 to section 60 offences under the WA Enforcement Act will now refer to “deleted” section 60 offences. This is to ensure that existing convictions under section 60 are still recognised and will not be affected by the new legislation.

Sub clause 14(2)(b) amends the *Prostitution Act 2000* (WA) by inserting proposed sections 217, 218, 219 and 220 of the Code into Schedule 1.

Clause 15 – *Working with Children (Criminal Record Checking) Act 2004 (WA)* amended

Clause 15 amends the *Working with Children (Criminal Record Checking) Act 2004 (WA)*.

This Act provides for the checking of criminal records and prohibits people charged with or convicted of certain offences from carrying out child related work.

Schedule 2 of the above Act contains a list of Class 2 offences including child pornography offences under sections 60 and 101 in the WA Enforcement Act.

Sub clause 15(2)(a) amends the *Working with Children (Criminal Record Checking) Act 2004 (WA)* by inserting proposed sections 217, 218, 219 and 220 of the Code into Schedule 2.

Sub clause 15(2)(b) amends the above Act to indicate that the reference currently in Schedule 2 to section 60 offences under the WA Enforcement Act will now refer to “deleted” section 60 offences. This is to ensure that existing convictions under section 60 are still recognised and will not be affected by the new legislation.

**PART 3 – AMENDMENTS CONSEQUENTIAL TO THE CLASSIFICATION
(PUBLICATIONS, FILMS AND COMPUTER GAMES) AMENDMENT ACT
2007 (COMMONWEALTH)**

Clause 16 – The Act amended

Clause 16 provides that Part 3 of this Bill amends the *Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)* (the WA Enforcement Act).

These are consequential amendments

Because WA is a member of the NCCS, these amendments are required by the *Classification (Publications, Films and Computer Games) Act 2007 (Clth)* (the 2007 Clth Amendment Act), which commenced operation on 15 March 2008, and amended the *Classification (Publications, Films and Computer Games) Act 1995 (Clth)* (the Clth Act).

Clause 17 – Section 3 amended

Clause 17(a) amends the definition of *approved form* in the WA Enforcement Act by deleting the existing definition and inserting the new definition of *approved form*. The approved form for a notice about classifications is carried out under section 8A of the Clth Act and empowers the Clth Minister (not the Director of the Classification Board) to approve a form for a notice about classifications.

Clause 17(b) amends section 3 of the WA Enforcement Act by inserting a definition of *Convenor* as referred to in the Clth Act because the “Convenor” has separate statutory powers under the Clth Act and the exercise of those powers is referred to in the WA Enforcement Act.

Clause 18 – Section 7 inserted

Clause 18 inserts proposed section 7 into the WA Enforcement Act in the same terms as section 14A inserted into the Clth Act by the Clth Amendment Act 2007.

Section 14A of the Clth Act clarifies that when several previously classified films are put together for distribution on one device, such as a DVD, the product does not require a further classification simply because of the fact of compilation.

Similarly, proposed section 7 of the WA Enforcement Act will provide that a single device that contains several previously classified films are to be treated, for the purposes of that Act, as if each of the classified films were on a separate device. This will clarify that such packaging of films will not contravene sections 66 and 74 of the WA Enforcement Act relating to the exhibition and sale of unclassified films. It will also reduce the regulatory burden to industry

Clause 19 – Section 66 amended

Section 66 of the WA Enforcement Act creates offences of screening films in a public place if the film is unclassified, exhibited under a different title from which it was classified, or has been modified.

Clause 19 inserts proposed section 66(2), so that section 66(1) is not contravened by public exhibition of a classified film:

- under a different title from that under which it was classified if it is contained on one device (a DVD) that consists only of 2 or more classified films; or
- with a modification, such as the removal or addition of navigation functions, referred to in section 21(2) of the Clth Act.

Clause 20 – Section 74 amended

Section 74 of the WA Enforcement Act provides that a person must not sell a classified film unless the film is sold under the same title under which it was classified and in the form, without alteration or modification, in which it is classified.

Clause 20 inserts proposed section 74(2), so that section 74(1) is not contravened by the sale of a classified film:

- under a different title from that under which it was classified if it is contained on one device (a DVD) that consists only of 2 or more classified films; or
- with a modification, such as the removal or addition of navigation functions, referred to in section 21(2) of the Clth Act.

Clause 21 – Section 96 amended

Section 96(2)(b)(i) of the WA Enforcement Act provides that an *illegal advertisement* is an advertisement which does not display the markings and consumer advice determined by the Director of the Classification Board under section 8 of the Clth Act.

Clause 21 amends section 96(2)(b)(i) by deleting the reference to “the Director” because this function no longer involves the Director under section 8 of the Clth Act.

Clause 22 – Section 102F amended

Section 102F of the WA Enforcement Act provides that the Director or WA Minister may require publishers to submit material for the purpose of a review of a classification decision.

Because the Clth Act now gives the Convenor of the Classification Review Board separate statutory powers from the Director of the Classification Board, it will now be the Convenor who requests publishers to make material available for the purpose of a review of a classification decision.

Clause 22 amends section 102F(1) by deleting the reference to “Director” and inserting “Convenor”.

Clause 23 – Section 106 amended

Section 106 of the WA Enforcement Act provides some scope for organisations approved by the WA Minister or the Director of the Classification Board to apply for an exemption from classification with respect to a specific film at a specific event (eg a film festival).

However, there is less scope for an exemption to permit an approved organisation to apply for a broad exemption relating to continuous public exhibition of interactive multimedia exhibitions.

In practice, all applications are made to the Director of the Classification Board.

Clause 23 amends section 106 so that under section 106(2) approved organisations may apply to the WA Minister or Director for an exemption under section 106(1) from the classification scheme with respect to a specific film at a specified event.

Proposed section 106(3A) amends section 106 so that the WA Minister or Director may direct that the classification scheme does not apply to an approved organisation for the purpose of all or any of its activities or functions that relate to films or computer games (eg a continuous event).

Proposed section 106(3B) provides that the application by an organisation, under proposed section 106(3A), for an exemption must be in writing; specify the extent of the exemption sought; and accompanied by the prescribed fee.

Clause 24 – Section 108 amended

Section 108 of the WA Enforcement Act provides for the WA Minister or Director to approve organisations that carry on activities of a medical, scientific, cultural or artistic nature for an exemption from the classification scheme in relation to an event (eg film festivals).

That is, there are two requirements; namely, approval of the organisation and obtaining an exemption.

When approving an organisation, regard must also be had to organisation's purpose and reputation and conditions relating to admission, and screening of films.

Clause 24 amends section 108 so that an organisation may also be given approval to carry on activities of an educational, cultural or artistic nature which are continuous.

Sub clause 24(1) amends section 108(1) so that it applies to organisations that may be approved for the purpose of conducting their activities at a specified event for the purposes of section 106(1) and organisations that may be approved for the purpose of conducting their activities or functions that relate to films or computer games for the purposes of proposed section 106(3A).

Sub clause 24(2) amends section 108(2) to clarify that section 108(2) only applies to organisations which carry on activities of a medical, scientific, educational, cultural or artistic nature at a certain event.

Section 108(2)(b) is amended so that it will also include activities of an "educational" nature. This is consistent with the approach in NSW and Victoria.

Sub clause 24(3) amends section 108 by inserting new section 108(3A) which will require the WA Minister or the Director to have regard to certain matters when approving an organisation (which conducts continuous events) for the purposes of proposed section 106(3A).

These include the purpose for which the organisation was formed; the extent to which it carries on educational, cultural or artistic activities; the reputation of the organisation in relation to films and computer games and the conditions it intends to impose on the admission of persons.

Consistent with NSW and Victorian legislation, the proposed section 108(3A) activities that may be carried out on a continuous basis are narrower (they exclude medical and scientific events) than the section 108(2) activities which are carried out at a defined event.

Sub clause 24(4) amends section 108(4) to allow the approval to be revoked because of a change in a matter as stipulated in section 108(2) or proposed section 108(3A).

Clause 25 – Section 130 amended

Section 130 of the WA Enforcement Act allows a person to make an application in the “approved form” to the Registrar to register premises (eg newsagents, service stations or sex shops) in WA for the purpose of selling restricted publications.

The “approved form” is a form approved by the WA Minister and has nothing to do with the definition of “approved form” referred to in section 3 of the WA Enforcement Act.

Clause 25 amends section 130(3) by deleting the reference to “the approved form” and inserting “a form approved by the Minister” to clarify that forms referred to in sections 3 and 130 are different.

Clause 26 – Section 141 amended

Section 141 of the WA Enforcement Act provides that the Director or Deputy Director of the Classification Board can issue a certificate relating to the classification of a film, publication or a computer game for evidentiary purposes.

Clause 26 amends section 141 so that the “Convenor” of the Classification Review Board can also issue a certificate relating to a film, publication or a computer game for evidentiary purposes.

This is necessary because, under the Clth Act, the “Convenor” can exercise separate statutory powers (ie issue a classification certificate) from the Director or Deputy Director of the Classification Board.

PART 4 – AMENDMENTS IN RELATION TO ADVERTISING

Clause 27 – The Act amended

Clause 27 provides that Part 4 of the Bill amends the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA) (the WA Enforcement Act).

These are consequential amendments.

Because WA is a member of the NCCS, these consequential amendments are required by the *Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008* (Clth) (the 2008 Clth Advertising Amendment Act), which came into effect on 1 July 2009 and amended the *Classification (Publications, Films and Computer Games) Act 1995* (Clth) (the Clth Act).

Under section 31(1) of the 2008 Clth Advertising Amendment Act, the Commonwealth Minister may, by legislative instrument, determine a scheme for advertising unclassified films and unclassified computer games.

Clause 28 – Section 3 amended

Clause 28 amends section 3 of the WA Enforcement Act by inserting a definition of *advertising scheme* as referred to and determined by the Commonwealth Minister in accordance with section 31(1) of the Clth Act.

The advertising scheme will be referred to in the WA Enforcement Act as it will be a requirement under that Act that all advertisements for unclassified films and unclassified computer games must be in accordance with the advertising scheme.

Clause 29 – Section 90 amended

Section 90 of the WA Enforcement Act provides that it is an offence for a person to publish an *unapproved advertisement* for a publication, film or a computer game.

Unlike other States, WA does not make it an offence for a person to publish an advertisement in an altered form to the form in which it is approved.

Clause 29 amends section 90 but it is not strictly an amendment that is consequential to the 2008 Commonwealth amendments.

However to make the WA Enforcement Act consistent with other States' legislation, clause 29 inserts proposed section 90(3)(a).

Proposed section 90(3)(a) creates an offence for a person to publish an advertisement in an altered form to the form in which it is approved.

Clause 29 also inserts proposed section 90(3)(b) which is a redraft and renumbering of existing section 90(2)(d).

Clause 30 – Section 91 amended

Section 91 of the WA Enforcement Act provides that a person must not publish an advertisement for certain publications, films and computer games.

Section 91(1) refers to unclassified publications, films and computer games; RC films and computer games and submittable publications.

In particular, section 91(1)(a) provides that a person may not publish an advertisement for an unclassified film, other than a film in relation to which a certificate of exemption has been granted under section 33 of the Commonwealth Act.

“Certificates of exemption” will no longer be issued as part of the advertising for unclassified films and the section that referred to “certificates of exemption” in the Clth Act was repealed on 1 July 2009 because all advertisements for unclassified films and unclassified computer games must comply with the advertising scheme.

Clause 30 amends section 91(1) by deleting the reference to unclassified films and unclassified computer games.

Clause 30 inserts proposed section 91(2A) which creates an offence to publish an advertisement for an unclassified film or an unclassified computer game otherwise than in accordance with the advertising scheme.

Clause 31 – Section 92 amended

Section 92 of the WA Enforcement Act provides that a person must not screen in a public place an advertisement for a film that has a higher classification than that of the feature film.

Sub clause 31(1) amends section 92 so that proposed section 92(1), formerly section 92, will apply to advertisements for classified films.

Sub clause 31(2) amends section 92 by inserting proposed section 92(2) which will create a new offence to exhibit in a public place an advertisement for a classified computer game that has a higher classification than that of the film which is being exhibited.

Sub clause 31(2) is not strictly an amendment consequential to the new advertising scheme. However, the new offence complements the advertising scheme and is necessary to counter “cross media advertising”.

Sub clause 31(3) inserts proposed section 92(3) which creates an offence to exhibit in a public place an advertisement for an unclassified film or an unclassified computer game during a programme for the exhibition of a classified film unless the exhibition of that advertisement complies with the advertising scheme.

Clause 32 – Section 94 amended

Section 94 of the WA Enforcement Act provides that a person must not sell a feature film that is accompanied by an advertisement for another film that has a higher classification than the feature film.

Sub clause 32(1) amends section 94 so that proposed section 94(1), formerly section 94, will apply to advertisements for classified films.

Sub clause 32(2) amends section 94 by inserting proposed section 94(2) which creates a new offence to sell a classified film that contains an advertisement for a classified computer game that has a higher classification than that of the film which is being sold.

This is a similar amendment as described in sub clause 31(2). It is designed to counter “cross media advertising” where people could be exposed to advertisements for material of a higher classification to that which they are purchasing.

Sub clause 32(3) inserts proposed section 94(3) which will provide that a person must not sell a classified film that is accompanied by an advertisement for an unclassified film or an unclassified computer game unless the sale of that film with the advertisement complies with the advertising scheme.

Clause 33 – Section 95 amended

Section 95 of the WA Enforcement Act provides that a person must not sell a computer game that is accompanied by an advertisement for another computer game that has a higher classification than the main computer game.

Sub clause 33(1) amends section 95 so that proposed section 95(1), formerly section 95, will apply to advertisements for classified computer games.

Sub clause 33(2) amends section 95 by inserting proposed section 95(2) which creates a new offence to sell a classified computer game that contains an advertisement for a classified film that has a higher classification than that of the computer game which is being sold.

This is a similar amendment as described in sub clauses 31(2) and 32(2). It is designed to counter “cross media advertising” where people could be exposed to advertisements for material of a higher classification to that which they are purchasing.

Sub clause 33(3) inserts proposed section 95(3) which will provide that a person must not sell a classified computer game that is accompanied by an advertisement for an unclassified computer game or an unclassified film unless the advertisement complies with the advertising scheme.

Clause 34 – Section 102D amended

Section 102D of the WA Enforcement Act provides that the Director of the Classification Board or the WA Minister may call in an advertisement. In particular, section 102D(1)(b) refers to a classified film.

Clause 34 amends section 102D(1)(b) by deleting “classified” so that section 102D applies to all films.

Clause 35 – Section 152A inserted

Clause 35 amends the WA Enforcement Act by inserting new section 152A so that it is not an offence to publish an advertisement for an unclassified film if the advertisement is allowed under transitional Commonwealth regulations in relation to the advertising of unclassified films that have been granted a certificate of exemption before the commencement of the advertising scheme.