

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

EXPLANATORY MEMORANDUM

The Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016 (the Bill) seeks to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (the WA Enforcement Act). The amendments will ensure that the WA Enforcement Act remains consistent with the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* (the Commonwealth Act) as recently amended by the *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014* (Cth) (the Amendment Act).

Clause Notes

Clause 1. Short title

This clause provides that this Act may be cited as the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2016*.

Clause 2. Commencement

This clause sets out the commencement provisions for the Act. Clauses 1 and 2 (the short title and commencement) will come into effect on the day the Act receives Royal Assent. The remainder of the Act will commence the following day.

Clause 3. Act amended

This clause provides that the Bill will amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*.

Clause 4. Section 3 amended

This clause will amend section 3 of the WA Enforcement Act. Section 3 of the WA Enforcement Act defines various terms used in the Act. Clause 4 of the Bill will:

- delete the definition of *classification certificate* as this term is no longer used in the WA Enforcement Act; and
- amend the definition of *determined markings* to be consistent with the definition in section 5 of the Commonwealth Act.

Clause 5. Section 6A inserted

This clause inserts a new section after section 5 of the WA Enforcement Act. The new section clarifies that markings and consumer advice must be displayed in accordance with any determinations under the Commonwealth Act. This is consequential on the revised definition of *determined markings*, and consistent with new subsections (3A) and (3B) inserted into section 8 of the Commonwealth Act.

Clause 6. Section 6 amended

This clause inserts two additional subsections into section 6 of the WA Enforcement Act.

New subsection (1) defines *subject to a conditional cultural exemption* for the purpose of section 6 of the WA Enforcement Act. The subsection imports the definition inserted into the Commonwealth Act by the Amendment Act.

New subsection (3) gives meaning to the term *relevant showing* and exempts relevant showings of material subject to a conditional cultural exemption from the operation of the Act. This is consistent with the Commonwealth Act's new exemption provisions, specifically the introduction of conditional cultural exemptions, and also with the amendments contained in clauses 18 to 21.

Clause 7. Section 64 amended

Clause 7 makes minor changes to terminology and inserts a new paragraph into section 64(6).

Subclauses (1) and (2)(c) delete the terms 'bear' and 'bears', respectively, and replace them with 'display' and 'displays'. Similar amendments are made to sections 65 and 65C by clauses 8(1), 8(2)(c), and 9(c). The replacement of 'bear' with 'display' improves consistency within the WA Enforcement Act, as well as consistency between that Act and the Commonwealth Act.

Subclause (2)(b) inserts paragraph (c) into section 64(6). Section 64(6) provides a 30 day 'grace period' during which a reclassified publication may still be sold or supplied with its original markings rather than with the markings applicable to the new classification. The period currently applies in respect of items whose classifications have changed through the operation of section 39, 97A, or 22B(3) of the Commonwealth Act. The new paragraph accommodates the Commonwealth's implementation of approved classification tools by applying the grace period to publications that have their classification revoked under section 22CH(1) of the Commonwealth Act and are then reclassified under section 22CH(4) of that Act.

Similar provisions are inserted into sections 65, 65C, 76, 86, 96, and 97 by clauses 8, 9, 12, 14, 15, and 17.

Clause 8. Section 65 amended

This clause makes minor changes to terminology and inserts a new paragraph into section 65(7). These amendments are analogous to those made by clause 7 in respect of section 64.

Clause 9. Section 65C amended

This clause makes minor changes to terminology and inserts a new paragraph into section 65C(3). These amendments are analogous to those made by clause 7 in respect of section 64.

Clause 10. Section 66 amended

Clause 10 amends section 66 to give effect to the Commonwealth Minister's power to prescribe modifications to films and computer games that will not automatically cause the item to become unclassified. This power was recently inserted into section 21 of the Commonwealth Act by Schedule 4 of the Amendment Act. Clause 11 makes a similar amendment to section 74.

Clause 11. Section 74 amended

This clause gives effect to the Commonwealth Minister's power to prescribe modifications to films and computer games. It is analogous to the amendment to section 66 made by clause 10.

Clause 12. Section 76 amended

This clause inserts a new paragraph into section 76(4). The amendment is analogous to that made by paragraphs (a) and (b) of clause 7(2) in respect of section 64.

Clause 13. Section 82 amended

Clause 13 inserts a new subsection into section 82. The new provision ensures that it is not an offence to sell or demonstrate a modified computer game, provided the modification is of a nature specified by the Commonwealth Act. New subsection (2) is consistent with existing provisions relating to films found in sections 66(2) and 74(2) of the WA Enforcement Act as well as amendments to those sections made by clauses 10 and 11 of the Bill.

Clause 14. Section 86 amended

This clause inserts a new paragraph into section 86(6). The amendment is analogous to that made by paragraphs (a) and (b) of clause 7(2) in respect of section 64.

Clause 15. Section 96 amended

Clause 15 makes minor changes to terminology and inserts a new paragraph into section 96(3).

Subclause (1) amends the definition of *illegal advertisement* in section 96(2) by deleting the phrase 'in the manner determined' and replacing it with 'in accordance with any determinations'. This change improves consistency between the Commonwealth Act and the WA Enforcement Act.

Subclause (2) inserts a new paragraph into section 96(3). The amendment is analogous to that made by paragraphs (a) and (b) of clause 7(2) in respect of section 64.

Clause 16. Section 97 amended

This clause inserts a new paragraph into section 97(3). The amendment is analogous to that made by paragraphs (a) and (b) of clause 7(2) in respect of section 64.

Clause 17. Section 102E amended

Clause 17 amends section 102E to reflect changes to section 39 of the Commonwealth Act. Previously, section 39 of the Commonwealth Act allowed the Classification Board to reclassify material either at the request of the Commonwealth Minister, or on its own initiative. The Amendment Act removed the Board's power to reclassify on its own initiative. Clause 17 of the Bill seeks to amend section 102E to clarify that action taken by the Board is in response to a request from the Minister.

Clause 18. Section 105 amended

Clause 19. Section 106 deleted

Clause 20. Section 107 amended

Clause 21. Sections 108 and 109 deleted

Clauses 18 to 21 of the Bill amend Part 8 of the WA Enforcement Act to reflect the changes to exemption arrangements under the Commonwealth Act. Prior to the commencement of Part 3 of Schedule 3 to the Commonwealth Amendment Act, the Commonwealth Act empowered the Director of the Classification Board to exercise powers conferred by State law in relation to the granting of exemptions. The Commonwealth Amendment Act removed that power and, instead, implemented a system of conditional cultural exemptions. The operation of the conditional cultural exemptions system in WA is facilitated by the amendments contained in clause 6.

Clause 18 deletes subsection (1) of section 105. Section 105(1) currently empowers the Director of the Classification Board to grant exemptions from Part 7 – Exemptions – of the WA Enforcement Act. Deletion of this provision is consistent with amendments to the Commonwealth Act, specifically with the repeal of section 53(b)(i), which permitted the Director to exercise powers conferred by State law in relation to the granting of exemptions.

Clause 19 deletes section 106 – Approved organizations, exemptions for as to specific films etc. This section sets out procedures in relation to applications for exemption by approved organizations. Section 106 is effectively superseded by sections 6C to 6E of the Commonwealth Act.

Clause 20 amends section 107 by removing reference to deleted sections and to the Director of the Classification Board. Subclause (a) deletes reference to sections 105(1) and 106 – these sections were deleted by clauses 18 and 19, respectively. As the Director of the Classification Board no longer retains functions under Part 8 of the WA Enforcement Act (see clause 18), subclause (b) removes reference to the Director.

Clause 21 deletes sections 108 and 109 of the WA Enforcement Act. These sections currently set out procedures for the approval of organisations and for appeals against decisions of the Director. Section 108 is no longer necessary due to the deletion of section 106 (see clause 19), while section 109 is redundant due to the removal of the Director's role (see clause 18).

Clause 22. Section 153B inserted

Clause 22 inserts new section 153B into the WA Enforcement Act. The new section contains transitional provisions which ensure that any existing exemptions under section 105(1) or 106 will not be rendered inoperative by the repeal of those sections.