

Child Pornography and Exploitation Material and Classification Legislation Amendment Bill 2009

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**Child Pornography and Exploitation Material and Classification
Legislation Amendment Bill 2009**

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Western Australia

LEGISLATIVE COUNCIL

(As amended in Committee)

**Child Pornography and Exploitation Material
and Classification Legislation Amendment
Bill 2009**

A Bill for

An Act to amend *The Criminal Code* in relation to child exploitation material offences, to make consequential and other amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Child Pornography and Exploitation Material and
Classification Legislation Amendment Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — Child exploitation material offences**

2 **Division 1 — *The Criminal Code* amended**

3 **3. Act amended**

4 This Division amends *The Criminal Code*.

5 **4. Part IV Chapter XXIV inserted**

6 At the end of Part IV insert:
7

8 **Chapter XXIV — Child exploitation material**

9 **216. Terms used**

10 In this Chapter —

11 ***child*** means a person under 16 years of age;

12 ***child exploitation material*** means —

- 13 (a) child pornography; or
14 (b) material that, in a way likely to offend a
15 reasonable person, describes, depicts or
16 represents a person, or part of a person, who is,
17 or appears to be, a child —
18 (i) in an offensive or demeaning context; or
19 (ii) being subjected to abuse, cruelty or
20 torture (whether or not in a sexual
21 context);

22 ***child pornography*** means material that, in a way likely
23 to offend a reasonable person, describes, depicts or
24 represents a person, or part of a person, who is, or
25 appears to be a child —

- 26 (a) engaging in sexual activity; or
27 (b) in a sexual context;

**Child Pornography and Exploitation Material and Classification
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Part 2 Child exploitation material offences

Division 1 The Criminal Code amended

s. 4

- 1 *material* includes —
- 2 (a) any object, picture, film, written or printed
- 3 matter, data or other thing; and
- 4 (b) any thing from which text, pictures, sound or
- 5 data can be produced or reproduced, with or
- 6 without the aid of anything else;
- 7 *picture* has the meaning given in section 204B.

8 **217. Involving child in child exploitation**

- 9 (1) For the purposes of this section, a person involves a
- 10 child in child exploitation if the person —
- 11 (a) invites a child to be in any way involved in the
- 12 production of child exploitation material; or
- 13 (b) causes a child to be in any way involved in the
- 14 production of child exploitation material; or
- 15 (c) procures a child for the purpose of the
- 16 production of child exploitation material; or
- 17 (d) offers a child for the purpose of the production
- 18 of child exploitation material.
- 19 (2) A person who involves a child in child exploitation is
- 20 guilty of a crime and is liable to imprisonment for
- 21 10 years.

22 **218. Production of child exploitation material**

23 A person who produces child exploitation material is

24 guilty of a crime and is liable to imprisonment for

25 10 years.

26 **219. Distribution of child exploitation material**

- 27 (1) In this section —
- 28 *distribute* child exploitation material, includes —
- 29 (a) communicate, exhibit, sell, send, supply, offer
- 30 or transmit child exploitation material to

**Child Pornography and Exploitation Material and Classification
Legislation Amendment Bill 2009**

Child exploitation material offences
The Criminal Code amended

Part 2
Division 1
s. 4

- 1 another person, or enter into an agreement or
2 arrangement to do so; or
- 3 (b) make child exploitation material available for
4 access by electronic or other means by another
5 person, or enter into an agreement or
6 arrangement to do so.
- 7 (2) A person who distributes child exploitation material is
8 guilty of a crime and is liable to imprisonment for
9 10 years.
- 10 (3) A person who has possession of child exploitation
11 material with the intention of distributing the material
12 is guilty of a crime and is liable to imprisonment for
13 10 years.
- 14 **220. Possession of child exploitation material**
- 15 A person who has possession of child exploitation
16 material is guilty of a crime and is liable to
17 imprisonment for 7 years.
- 18 **221A. Defences and exclusions for section 217, 218, 219**
19 **or 220**
- 20 (1A) It is no defence to a charge of an offence under section
21 217, 218, 219 or 220 to prove that the accused person
22 did not know the age of the child to whom the charge
23 relates, or the age of the child described, depicted or
24 represented in the material to which the charge relates,
25 or believed that the child was of or over 16 years of
26 age.
- 27 (1) It is a defence to a charge of an offence under
28 section 217, 218, 219 or 220 to prove that —
- 29 (a) the material to which the charge relates was
30 classified (whether before or after the
31 commission of the alleged offence) under the
32 *Classification (Publications, Films and*

**Child Pornography and Exploitation Material and Classification
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Child exploitation material offences
The Criminal Code amended

**Part 2
Division 1
s. 4**

1 (b) for a person to possess or distribute child
2 exploitation material in the exercise of a
3 function relating to the classification of such
4 material conferred or imposed on the person
5 under the *Classification (Publications, Films
6 and Computer Games) Act 1995*
7 (Commonwealth).

8 (4) In subsection (3)(a) —
9 ***law enforcement agency*** means —
10 (a) the Police Force of the State; or
11 (b) the Police Service of the State; or
12 (c) the Office of the Director of Public
13 Prosecutions of the State; or
14 (d) the Corruption and Crime Commission; or
15 (e) any entity of another State or a Territory, the
16 Commonwealth or another country that has
17 functions similar to functions of an entity
18 referred to in paragraph (a), (b), (c) or (d).

19 **221B. Forfeiture**

20 (1) If a person is charged with an offence against
21 section 217, 218, 219 or 220, the court may order the
22 material to which the charge relates be forfeited to the
23 State.
24 (2) The court may make an order under subsection (1)
25 whether or not the person is convicted of the offence.
26 (3) This section does not limit the court's powers under
27 section 731 or under the *Criminal Property*
28 *Confiscation Act 2000*.
29

**Child Pornography and Exploitation Material and Classification
Legislation Amendment Bill 2009**

Part 2 Child exploitation material offences

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

s. 5

1 **5. Section 557K amended**

2 In section 557K(1) in the definition of *child sex offender*:

3 (a) after paragraph (a)(i) insert:

4

5 (ii) Chapter XXIV — Child exploitation
6 material;

7

8 (b) in paragraph (e) after “offence under” insert:

9

10 the deleted

11

12 (c) in paragraph (f)(ii) delete “child pornography;” and
13 insert —

14

15 child exploitation material (as defined in section 216);

16

17 (d) after each of paragraphs (a) to (i) insert:

18

19 or

20

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

23 **6. Act amended**

24 This Division amends the *Classification (Publications, Films
25 and Computer Games) Enforcement Act 1996*.

26 **7. Section 3 amended**

27 In section 3 delete the definition of *child pornography*.

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Child exploitation material offences **Part 2**
Classification (Publications, Films and Computer Games) **Division 2**
Enforcement Act 1996 amended

s. 8

1 **8. Part 7 Division 1 heading amended**

2 In the heading to Part 7 Division 1 delete “**articles, child**
3 **pornography**” and insert:

4
5 **articles**
6

7 **9. Section 60 deleted**

8 Delete section 60.

9 **10. Section 99 amended**

10 In section 99 in the definition of *objectionable material* delete
11 paragraph (b).

12 **11. Section 116 amended**

13 Delete section 116(2).

14 **12. Section 117 amended**

15 (1) In section 117(2a):

16 (a) in paragraph (a) delete “18+;” and insert:

17

18 18+; or

19

20 (b) in paragraph (b) delete “RC; or” and insert:

21

22 RC,

23

24 (c) delete paragraph (c).

25 (2) In section 117(3) delete “(2a)(a), (b) or (c)” and insert:

26

27 (2a)(a) or (b)

**Child Pornography and Exploitation Material and Classification
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Part 2 Child exploitation material offences

Division 3 Consequential amendments

s. 13

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Division 3 — Consequential amendments

**13. Community Protection (Offender Reporting) Act 2004
amended**

(1) This section amends the *Community Protection (Offender Reporting) Act 2004*.

(2) In Schedule 2:

(a) after the item relating to *The Criminal Code* s. 204B(3)
insert:

s. 217	Involving child in child exploitation
s. 218	Production of child exploitation material
s. 219	Distribution of child exploitation material
s. 220	Possession of child exploitation material

(b) under the heading relating to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* delete “s. 60” and insert:

the deleted s. 60

14. Prostitution Act 2000 amended

(1) This section amends the *Prostitution Act 2000*.

(2) In Schedule 1:

(a) under the heading relating to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* delete “s. 60” and insert:

the deleted s. 60

**Child Pornography and Exploitation Material and Classification
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Child exploitation material offences
Consequential amendments

**Part 2
Division 3
s. 15**

- 1 (b) after the item relating to *The Criminal Code* s. 204A
2 insert:
3
4 s. 217
5 s. 218
6 s. 219
7 s. 220
8

9 **15. Working with Children (Criminal Record Checking) Act 2004**
10 **amended**

11 (1) This section amends the *Working with Children (Criminal*
12 *Record Checking) Act 2004*.

13 (2) In Schedule 2:

14 (a) after the item relating to *The Criminal Code* s. 204B insert:
15

s. 217	Involving child in child exploitation
s. 218	Production of child exploitation material
s. 219	Distribution of child exploitation material
s. 220	Possession of child exploitation material

16

17 (b) under the heading relating to the *Classification*
18 *(Publications, Films and Computer Games) Enforcement*
19 *Act 1996* delete “s. 60” and insert:

20

21 the deleted s. 60

22

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Amendments consequential to the Classification (Publications,
Films and Computer Games) Amendment Act 2007
(Commonwealth)

Part 3

s. 19

1 **19. Section 66 amended**

2 (1) In section 66 delete “A person” and insert:

3

4 (1) A person

5

6 (2) At the end of section 66 insert:

7

8 (2) Subsection (1) is not contravened by reason only of the
9 exhibition of a classified film —

10 (a) under a title different from that under which it
11 is classified if it is contained on one device that
12 consists only of 2 or more classified films; or

13 (b) with a modification referred to in section 21(2)
14 of the Commonwealth Act.

15

16 **20. Section 74 amended**

17 (1) In section 74 delete “A person” and insert:

18

19 (1) A person

20

21 (2) At the end of section 74 insert:

22

23 (2) Subsection (1) is not contravened by reason only of the
24 sale of a classified film —

25 (a) under a title different from that under which it
26 is classified if it is contained on one device that
27 consists only of 2 or more classified films; or

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Part 3 Amendments consequential to the Classification (Publications,
Films and Computer Games) Amendment Act 2007
(Commonwealth)

s. 21

1 (b) with a modification referred to in section 21(2)
2 of the Commonwealth Act.
3

4 **21. Section 96 amended**

5 In section 96(2) in the definition of *illegal advertisement*
6 paragraph (b)(i) delete “by the Director”.

7 **22. Section 102F amended**

8 In section 102F(1) delete “Director” and insert:

9

10 Convenor
11

12 **23. Section 106 amended**

13 (1) In section 106(2) delete “may be made by an approved
14 organization and” and insert:

15

16 by an organization approved under section 108 for an
17 exemption under subsection (1)
18

19 (2) After section 106(2) insert:
20

21 (3A) The Minister or the Director may, on application under
22 subsection (3B), direct in writing that Part 7 does not
23 apply, or any provisions of that Part do not apply, to an
24 organization approved under section 108 in relation to
25 all or any of its activities or functions that relate to
26 films or computer games.

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Amendments consequential to the Classification (Publications,
Films and Computer Games) Amendment Act 2007
(Commonwealth)

Part 3

s. 24

- 1 (3B) An application by an organization approved under
2 section 108 for an exemption under subsection (3A)
3 must —
4 (a) be in writing; and
5 (b) specify the extent of the exemption sought; and
6 (c) be accompanied by the prescribed fee.
7

8 **24. Section 108 amended**

- 9 (1) In section 108(1) delete “this Part.” and insert:
10
11 section 106(1) or (3A).
12
13 (2) In section 108(2):
14 (a) delete “organization,” and insert:
15
16 organization for the purposes of section 106(1),
17
18 (b) in paragraph (b) after “scientific,” insert:
19
20 educational,
21
22 (3) After section 108(2) insert:
23
24 (3A) In considering whether to approve an organization for
25 the purposes of section 106(3A), the Minister or
26 Director must have regard to the following —
27 (a) the purpose for which the organization was
28 formed;

**Child Pornography and Exploitation Material and Classification
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Part 3 Amendments consequential to the Classification (Publications,
Films and Computer Games) Amendment Act 2007
(Commonwealth)

s. 25

- 1 (b) the extent to which the organization carries on
2 activities of an educational, cultural or artistic
3 nature;
4 (c) the reputation of the organization in relation
5 to —
6 (i) the screening of films by the
7 organization; or
8 (ii) the demonstration of computer games
9 by the organization,
10 as the case may be;
11 (d) the conditions as to admission of persons to —
12 (i) the screening of films by the
13 organization; or
14 (ii) the demonstration of computer games
15 by the organization,
16 as the case may be.
17

- 18 (4) In section 108(4) delete “subsection (2),” and insert:
19
20 subsection (2) or (3A),
21

22 **25. Section 130 amended**

- 23 In section 130(3) delete “the approved form” and insert:
24
25 a form approved by the Minister
26

***Child Pornography and Exploitation Material and Classification
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Amendments consequential to the Classification (Publications,
Films and Computer Games) Amendment Act 2007
(Commonwealth)

Part 3

s. 26

1 **26. Section 141 amended**

2 In section 141 delete “Director or Deputy Director” and insert:

3

4 Director, Deputy Director or Convenor

5

1 **Part 4 — Amendments in relation to advertising**

2 **27. Act amended**

3 This Part amends the *Classification (Publications, Films and*
4 *Computer Games) Enforcement Act 1996*.

5 **28. Section 3 amended**

6 In section 3 insert in alphabetical order:

7

8 *advertising scheme* means the scheme determined
9 from time to time under section 31(1) of the
10 Commonwealth Act;
11

12 **29. Section 90 amended**

13 (1) In section 90(2) in the definition of *unapproved advertisement*:

14 (a) in paragraph (c) delete “that Act; or” and insert:

15

16 that Act.

17

18 (b) delete paragraph (d);

19 (c) after each of paragraphs (a) and (b) insert:

20

21 or

22

23 (2) After section 90(2) insert:

24

25 (3) If an advertisement for a film, publication or computer
26 game is approved under section 29 of the
27 Commonwealth Act, a person must not publish the
28 advertisement —

29 (a) in an altered form to the form in which it is
30 approved; or

1 (b) if it is approved subject to conditions, except in
2 accordance with those conditions.

3 Penalty: a fine of \$5 000.
4

5 **30. Section 91 amended**

6 (1) In section 91(1):

7 (a) delete paragraph (a);

8 (b) delete paragraph (c);

9 (c) after each of paragraphs (b) and (d) insert:
10

11 or
12

13 (2) After section 91(1) insert:
14

15 (2A) A person must not publish an advertisement for an
16 unclassified film or an unclassified computer game
17 otherwise than in accordance with the advertising
18 scheme.

19 Penalty: a fine of \$5 000.
20

21 **31. Section 92 amended**

22 (1) In section 92:

23 (a) delete “A person” and insert:
24

25 (1) A person
26

27 (b) after “advertisement for a” insert:
28

29 classified
30

**Child Pornography and Exploitation Material and Classification
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Part 4 Amendments in relation to advertising

s. 31

1 (c) after “of another” insert:

2

3 classified

4

5 (2) At the end of section 92 insert:

6

7 (2) A person must not exhibit in a public place an
8 advertisement for a classified computer game during a
9 programme for the exhibition of a classified film unless
10 the film has a classification specified in column 1 of an
11 item in the Table and the advertised computer game
12 has a classification specified opposite it in column 2 of
13 that item.

14

Table

Item	Column 1 Film	Column 2 Advertised computer game
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA 15+	MA 15+, M, PG or G
5	R 18+	MA 15+, M, PG or G

15 Penalty: \$2 000

16 (3) A person must not exhibit in a public place an
17 advertisement for an unclassified film or an
18 unclassified computer game during a programme for
19 the exhibition of a classified film unless the exhibition

1 of that advertisement with the classified film complies
2 with the advertising scheme.

3 Penalty: \$5 000.
4

5 **32. Section 94 amended**

6 (1) In section 94:

7 (a) delete “A person” and insert:

8

9 (1) A person

10

11 (b) after “must not sell a” insert:

12

13 classified

14

15 (c) after “for another” insert:

16

17 classified

18

19 (2) At the end of section 94 insert:

20

21 (2) A person must not sell a classified film that is
22 accompanied by an advertisement for a classified
23 computer game unless the film has a classification
24 specified in column 1 of an item in the Table and the
25 advertised computer game has a classification specified
26 opposite it in column 2 of that item.

**Child Pornography and Exploitation Material and Classification
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Part 4 Amendments in relation to advertising

s. 33

1

Table

Item	Column 1 Film	Column 2 Advertised computer game
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA 15+	MA 15+, M, PG or G
5	R 18+	MA 15+, M, PG or G

2

Penalty: \$2 000

3

- (3) 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 the classified film with that advertisement complies with the advertising scheme.

4

5

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8

Penalty: \$5 000.

9

10 **33. Section 95 amended**

11 (1) In section 95:

12 (a) delete “A person” and insert:

13

14 (1) A person

15

16 (b) after “must not sell a” insert:

17

18 classified

19

1 (c) after “for another” insert:

2

3 classified

4

5 (2) At the end of section 95 insert:

6

7 (2) A person must not sell a classified computer game that
8 is accompanied by an advertisement for a classified
9 film unless the computer game has a classification
10 specified in column 1 of an item in the Table and the
11 advertised film has a classification specified opposite it
12 in column 2 of that item.

13

Table

Item	Column 1 Computer Game	Column 2 Advertised film
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA 15+	MA 15+, M, PG or G

14

Penalty: \$2 000

15

16

17

18

19

20

21

(3) A person must not sell a classified computer game that
is accompanied by an advertisement for an unclassified
computer film or an unclassified computer game unless
the sale of the classified computer game with that
advertisement complies with the advertising scheme.

Penalty: \$5 000.

s. 34

1 **34. Section 102D amended**

2 In section 102D(1)(b) delete “classified”.

3 **35. Section 152A inserted**

4 After section 151 insert:

5

6

152A. Advertisements for unclassified films

7

8

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11

(1) A person does not commit an offence under section 91(2A) by publishing an advertisement for an unclassified film if the advertisement is published in accordance with a transitional Commonwealth regulation.

12

13

14

15

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18

(2) In subsection (1) —
transitional Commonwealth regulation means a regulation made under the *Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008* (Commonwealth) Schedule 1 item 13.

19
