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

Second Reading

Resumed from 14 September.

MR J.R. QUIGLEY (Butler) [2.54 pm]: The Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016 is brought forward by the government and has gone through the upper house as part of the recommendations flowing from the Australian Law Reform Commission's reform of the national classification scheme. The national classification scheme is a commonwealth scheme on which each of the states pass legislation to reflect the commonwealth agreement. This classification scheme has now been operative in Australia for nearly 25 years. At a meeting of the Standing Council of Law and Justice in 2013, three years ago, it was recommended that there be changes made to the scheme to accommodate the evolution of digital media and the use and propagation of computer games and the like. This scheme recommended that there be exemptions to the national scheme for certain categories of films, including films about almost scientific matters such as natural history, social science and the like. The most significant element of the reform exemption relates to festivals and they are usually those functions that provide for the screening of art house films and the like that sometimes have rather limited release other than on the festival circuit, but which nonetheless under the old scheme would require full certification. Under the proposed amendments there will be a consolidated set of rules to allow for classifications and there can be direct application to the director that the classification be removed and replaced with a system of conditional cultural exemptions available under the commonwealth act on the basis of self-assessment. However, safeguards similar to those previously in place for festivals will ensure that the public is being protected, particularly children.

I would like to say here that the whole scheme classifications is to protect children and others in the community from exposure to what is regarded as the publication of material that would be harmful to the development of children and the peaceful order of our society. I reflect that to a certain extent the whole system of classification, while useful, is nonetheless being superseded somewhat by the evolution of the internet. Many of the films now can singly be downloaded from other jurisdictions, not always legally, quite often illegally. We know of the saga of the *Dallas Buyers Club* when the producers of the film pursued people downloading in other jurisdictions, including Australia, and it was eventually held by the Federal Court of Australia that the only thing that the downloaders were liable for if pursued was the cost of the movie rather than exorbitant damages claims. I think this rendered the inhibition on downloading of films a little bit obsolete. Of course, the advent of the national broadband network and the facility to download any movie in under 10 minutes, making it viewable by children, also renders the classification of those movies somewhat obsolete. But we do take the point that there are, of course, public exhibitions of these movies to larger audiences and that overall classification provides a useful framework within which families and others can make decisions about whether to attend those screenings.

The Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016 seeks to amend Western Australia's enforcement regime to remove non-operational provisions regarding exemption applications that are made to the director of the commonwealth Classification Board and to facilitate the system of conditional cultural exemptions. However, as the minister pointed out in her second reading speech, it is expected that most of the exemptions will continue to be sought and obtained under the commonwealth act, and that the provisions in the WA act that allow the Attorney General to exempt an item from the classification requirements in Western Australia will be retained. I understand from the government's second reading speech that it is anticipated that most of the applications for classification will still be made under the commonwealth act, but there will be rare exceptions in which an application can be made to the Western Australian Attorney General to exempt an item from classification.

The commonwealth amendment act expanded the exceptions to the modifications rule so that films and computer game that are subject to certain types of modifications do not require classification. As we have seen, a lot of games come out in versions, if I can put it that way—*Call of Duty 1, Call of Duty 2* and the like—so rather than there being a mandatory requirement to seek classification for new productions of these games, the classification will carry on. We support the scheme for the classification and modification of computer games as brought forward by this government. It reflects, as I have said, the commonwealth's amendments. It would be obtuse for Western Australia to not support the commonwealth's scheme, in much the same way as we support many other national schemes, such as child support schemes under our Family Court Act, to bring those in line with amendments under the commonwealth family court scheme. There are a number of areas—the Corporations Act is another one—in which the good governance of these matters at the commonwealth level requires cooperation from the states to bring forward amendments to reflect the national scheme. The Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016 seeks to ensure, as the minister said, that the Western Australian act is consistent with the commonwealth act with respect to all the exception

provisions, including those relating to computer games. At the moment the WA act fails to apply any of the exceptions to the modifications rule for computer games. A similar anomaly existed in other state and territory legislation. All jurisdictions have remedied the issue by making amendments to apply the commonwealth amendment act. It is therefore appropriate that the government bring forward these amendments in Western Australia.

I pause again to reflect that although the amending legislation will bring us into line with the commonwealth legislation on the classification of computer games, as I said previously, the advent of the internet somewhat undermines that and makes it a bit redundant, because many computer games are played online against players and participants in not only other Australian jurisdictions but also other countries. Parents and carers in Western Australia are concerned about the sexual scenes and gratuitous violence that exists in computer games. The classification guidance given to parents and carers is somewhat rendered redundant by the fact that children can get online and play with this sort of material at will and endlessly. Nevertheless, that is not in any way to say that we should not have this scheme. One need only go into one of the big electronic retailers to see how much floor space is devoted to the sale of electronic computer games, and that is notwithstanding the fact that people can access them online for free or for a modest access fee.

The amending legislation also provides for, in certain cases, classification tools that enable people who wish to seek classification for their materials for public showing to do that by way of online questionnaires that deliver automated decisions. Of course an increasing mass of material in terms of movies, television shows and computer games is coming onto the market all the time. There have been rapid advances in this sort of technology since the national classification scheme was introduced 20 years ago in 1996. Indeed, the significant majority of computer games were not classified under NCS prior to being made available to Australian consumers. However, the Classification Board was unable to classify the vast volume of this type of content—a fact I was just referring to—and to assist the Classification Board to classify such content, after the passage of this legislation, online tools will be available to those who wish to broadcast this content in this jurisdiction.

The structure of the enforcement act and the way it will interact will ensure that most of the new provisions relating to the classification tools will automatically have effect in Western Australia, as was pointed out by the minister in her second reading speech. The amending legislation makes minor amendments to the enforcement provisions, as I say, to make them consistent across Australia.

As the minister pointed out, the bill will insert into the Western Australian act the commonwealth requirement for the display of determined markings to give parents, carers and consumers guidance as to what the material contains.

In introducing this legislation to the chamber in her second reading speech, the minister pointed out that the minor amendments that will be affected by this legislation will ensure that Western Australian enforcement provisions are consistent with the principal legislation administered by the commonwealth. As I said, it is very important that this acts across the national market in a whole range of legislation, whether it is the Corporations Act, this law, or many other laws concerning, for example, families.

The bill will make provisions in our legislation consistent with the national legislation. I think that in a number of these areas, including censorship, we will see a national scheme develop in Australia with a reference of powers. It is clear that the showing of films and the sale of computer games, and all the other products that can now be instantly pushed out digitally across the internet into an Australian national market, really call for a national scheme. That begs the question of the enforcement of such a scheme but I think that is the way it will evolve. In the future, we should not leave this Parliament to have to come back and revisit this time and time again, merely to bring in national provisions which, as I said, we do in other areas. The Corporations Act is somewhat different because the reference has been made, although, as we saw in the Bell case, the states retain their capacity to recall parts of the referred power. Perhaps censorship is another area in which future governments can look at making the reference so that there is truly a national scheme, which is nationally administered.

I shall not go on any further. The operative provisions are small. The amendments have been adopted by the other states and, on that basis, the opposition joins the government in commending this bill to the chamber.

MR W.J. JOHNSTON (Cannington) [3.12 pm]: I want to make some remarks about the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016. It is interesting that in 2015, the global gaming industry turned over $101 billion. In the United States last year, the average expenditure on video games was $61 a person. As an example of the growth of this industry, in 2000 in the US, over $5.5 billion was spent on video games and in 2015, $15.4 billion was spent. That is three times the amount spent in 2000. The Google Play store has 2.2 million apps; the Apple store has over two million apps; the Windows store has over 500 000 apps and there are nearly the same number in Amazon's app store. To go through the ordinary

classification process for the millions and millions of applications—games and other things—that are on these online platforms would bankrupt any government. It is literally impossible to provide a classification for all the apps, games and other online content. That means the current situation for parents and the community to regulate access to appropriate material is unbelievably complicated. In the Australian context, parallel importing makes that even more complicated because there are now more channels for even physical games to come into the country. Once upon a time, the only opportunity to import content was through the authorised reseller for Australia. The authorised reseller had a relationship with the classification authorities and simply dealt with them directly. Now, there are hundreds of channels to legally import copyrighted games that come from different markets and therefore can have varying content. A game might be produced by one of the huge gaming companies that make different versions for different markets to take into account the classification interests of separate countries. However, legal parallel imports of games might now come from a market in which the classification rules are different. What might be seen as mature content in Australia could be seen as either a higher or lower classification in another market. I will give the example of the film *Wedding Crashers*. In Australia, it was rated M and in Singapore it had an R rating. It was the exact same movie but, in Singapore, children under the age of 18 years could not see it; in Australia, it was available on free-to-air television. It is now a different world.

In some countries, violent content as opposed to sexual content is considered appropriate for young people whereas in Australia, violence with obvious simulated wounds might be classified as MA, which is available to teenagers or younger people accompanied by a parent. Therefore, a 12-year-old cannot go in to JB Hi-Fi and buy an MA-rated game without having a parent around. In other parts of the world, including the United States and other countries closer to us, that sort of violence with simulated gore is considered acceptable content for younger people. It might get what we would consider an M rating. That means an item could be purchased by a younger person with the understanding that there is going to be violent imagery. Indeed, people can buy games and rate them themselves by turning on and off the controls in the game. In some games, there is a blood and gore slider; at one end it is more PG, and at the other end, it becomes MA. Parents and the community now deal with these things constantly and there is a very different paradigm for every one of us to navigate. I am sure the minister is in the same position with young teenagers. My youngest is now 19 years old; thank God I am through those early teenage years, but it was always a struggle to explain to him why we would not let him buy an MA-rated product when he would say that his mates had them. We told him, "You're under 15; you're only going to get an M-rating." He was the only teenager in the world who did not like mobile phones, but now he has an iPhone so it would be very difficult for us to even know what is on it. The quality of content on mobile devices is extraordinary. People can watch high-definition videos on iPhones, which, if I think about it, is unbelievable. There are also other devices like Apple TV that allow people to take the content on their iPhone or other smartphones and project it onto a TV; it will be shown through the other device on the TV. We are now in a very different world.

There is also the issue of rating games. People can see on the packaging that a game is rated PG but content may vary online—something like that; I cannot remember the exact words. Games with PG or M-rated content can now be played on gaming consoles, personal computers, iPhones, or other smart devices. Through the internet, we can play on them with people from all around the world but suddenly we are in an MA-rated or other rated environment.

Classification has become unbelievably complex. We now have to rely, effectively, on the good graces of the operators of the app stores. Apple and Google et cetera are now providing the classification process. These mega companies do not want to have a fight with parents all around the world, so they are providing, effectively, a voluntary scheme to classify the games and other applications that are put into their stores. It is now a new world for parents, and it increases the responsibility on parents to know what their kids are doing because they cannot rely on government to do that for them.

It is interesting that there was the opportunity for Australia to have a filtering of the internet—as is done in other countries such as the UK—in which the internet service providers would have been required to apply a filter so that content that could not be classified under Australian law would not be available on the internet in Australia. Although that still would not have eliminated all violent and sexual content that parents have to deal with, it would at least have removed all the content that would not receive classification in Australia—that is, content above the X classification would never be available in Australia. Unfortunately, that was a proposal of the federal Labor Party—in fact, a proposal of my friend the then Senator Stephen Conroy in his capacity as Minister for Broadband, Communications and the Digital Economy. Interestingly enough, that was rejected by the Liberal Party. It is quite extraordinary that the Liberal Party chose to water down the opportunity for classification of content in Australia. I imagine that at some point in time we will have to come back to that. As my good friend the member for Butler points out, once upon a time, when we had only dial-up, that was really a protection, because it would take up to three days to download a film. I have the NBN at my residence. We can watch high-definition content streamed directly to the TV. We do not have to download it. It can be streamed

directly to the TV because the quantity of data that can come down the NBN pipe in fibre to the home is that effective. At some time I think the Liberal Party will have to revisit its decision to oppose internet filtering.

It is interesting that if people do a search on Google, they are not actually searching the internet, but searching the part of the internet that Google has indexed. Only a very small percentage of the internet is actually indexed by Google and the other search engines. The argument that internet filtering would slow down access to the internet is not reflected in reality. I think that in England the delay in getting a response from an internet search is about one quarter of a second. Therefore, the filtering can be applied at the ISP, as is done in the UK, and as was proposed by the Labor Party and opposed by the Liberal Party, with no discernible impact on users' capacity to surf the internet. I make the point, for those people who argue that filtering out extremely violent and unregulated sexual content is somehow an affront to political speech, that it is possible for internet providers to filter internet content through their terms and conditions. Most people, not having read the terms and conditions, do not know that their content is actually being filtered by the internet companies in any case. A test was done by an academic in the UK who set up a free Wi-Fi hotspot to test whether people read the terms and conditions of use of these sorts of free services. One of the conditions of the service was that the user agreed to give up their firstborn child. Not one person who connected to that free Wi-Fi service objected to giving up their firstborn child! That was just an academic proving a point.

However, who has actually read the terms of their internet service provider? I will tell members a story. I will not say the name of the ISP, but we have an internet phone service at home. When we went onto the NBN, of course our copper line was cut off and we chose to go to an internet phone—a voice over internet protocol phone—and why would we not? Those phones are effectively free. I got through the signup provision and was played a standard statement that said that I agreed not to be part of the telephone standards—because of the VoIP, ISPs are entitled to seek to have people opt out of the consumer protections and service standards that are available through a licensed telephone operator. I said no. I dealt with a live person who entered all my details into a computer and did all these bits and pieces. The person then said, "I just need to play you this statement." It is a legal statement, so they want to use the exact words that the lawyers have told them to use. The person pressed a button, and the exact specific words in the statement were played. People are supposed to say yes, but I said no. The person asked me, "What do you mean, no?" I said, "I don't know what the details are of the consumer protection arrangements, but on the basis that I don't know what they are, I'm not opting out. I assume that they're good." The guy said, "This is a problem, because everybody opts out." I told him that I would not do that. He put me on hold and went away to talk to his supervisor. Two or three minutes later, a supervisor got on the line. He asked me, "Did you say no?" I said, "Yes; I'm not going to opt out of my entitlements." He said, "But everybody agrees to opt out!" They went away again, and I was on hold for about five minutes. The original bloke who I had been talking to came back on the line and said, "All right. We're going to complete your order." I asked him if that meant I could have a VoIP phone without opting out, and he said, "Yes, yes; all right." Of all the clients of this ISP in Perth, I am apparently one of a very small number of people who have ever said that they are not going to opt out of these consumer protections. The point of that story is that I do not know what is in those protections. I certainly have not read all my ISP's terms and conditions—I have skimmed them—but I would bet $100 that I am like most people in that I do not know what those entitlements are. We often do not actually know what the ISPs are doing.

The situation is the same with our personal data. This is an issue for government, too. If data in the cloud is stored in a foreign country, the data protection rules for that country apply, not the Australian data rules. I have made the point in the past that collection of personal information by companies can be for only a primary purpose. It cannot be for a secondary purpose unless people give that information. For example, when dealing with any ISP, people would give them their personal information because they would need to have their bill sent to them and they need to know where the service is and all that sort of stuff. However, the ISP does not have an automatic right to sell that information on to somebody else for marketing.

[Member's time extended.]

Mr W.J. JOHNSTON: There is usually a little box that says, "Unless you tick this box, you are opting out." That is one of the common aspects. We are agreeing to a lot of things without knowing. This is now an unbelievably complicated legal situation. Until the Liberal government came into office in Western Australia, we could not buy R-rated video games in Western Australia—we could buy R-rated films, but not R-rated video games. It was only after the Liberal Party came into office that it allowed the sale of R-rated video games. If we walk into any of the big retail shops, we will see the R-rated video games that were previously banned in Western Australia. We were the only state with that separate regime. Now, through online delivery of this material, things have become incredibly complicated. It is appropriate that we reform our classification system to catch up with reality. There is the issue of the global gaming industry, which, as I say, is a $100 billion industry. Interestingly, with Perth's involvement in the online gaming industry, there are no issues around tyranny of distance. It is just as effective for a game to be developed in Perth as it is anywhere else in the world. This is one

of those industries that can be nurtured here in Perth. I am glad to see that the Leader of the Opposition has launched a policy to encourage the gaming industry here in Western Australia. I am indebted to the organisation here in Perth called FORM, which has pointed out to me that the technologies and skills required for 3D mapping for the resource sector are completely transferable to the gaming industry, and, indeed, the technologies and skills in the gaming industry are completely transferable to the 3D-mapping needs of the resource sector. Western Australia is a leading jurisdiction in the development of computer technologies that support the resource sector, so it can be seen that WA also has a strong base on which to build a gaming industry here. There was a time, under the former Labor government, when we nearly got Electronic Arts, one of the world's leading gaming companies, to set up a centre here in Perth, but that did not transpire. Without those massive gaming organisations moving in, we will probably not have thousands of workers in the sector, but we could certainly have hundreds, which would contribute to expanding our industries in Perth, to exports from Australia and to diversifying our economy. I am not the shadow spokesperson in the information technology space, although I know someone who is, Hon Kate Doust! I know from talking to her from time to time that there are some really innovative activities in the gaming sector here and opportunities. There are incubators, including a specialist incubator that I know that you would be interested in, Madam Acting Speaker (Ms J.M. Freeman), which is encouraging women with young children into the space. The shared working space is specifically designed for women with preschool children, which obviously removes one of those barriers to full participation in the workforce for women with children returning to full-time work.

I will move on to the other issue of the arrangements for classifying films used under the cultural exemption for film festivals. I declare an interest; that is, I am on the board of the Balai Bahasa Indonesia Perth Inc, an organisation that supports the study of Indonesian language and culture. We run the Perth International Film Festival each year. Getting Indonesian films subtitled and ticked off by the classification authorities involves quite an effort. We do not pay for these films; they are provided to us by the distributors. They can be subtitled at only a limited number of places. Sometimes that happens in Indonesia but it can be done also in Australia. We have to get the film into the country, subtitled and to the classification authorities. Sometimes we get them quite late. When we put in a submission, we have to say what we think the classification will be. Often, with Indonesian films, if we indicate that they will be for a mature audience, because Indonesians like their violent films, it is a big effort, particularly for organisations such as Balai Bahasa, which comprises volunteers; there are no full-time staff. In the past, under the federal Labor government, we were lucky enough to get a grant to support the Perth International Film Festival. It was granted for two years but we were able to use it over three years because we were very frugal, but now we do not have any outside support to run the film festival, so it takes quite a lot of effort to liaise with Indonesian studios and classification authorities. If we can simplify the classification process for film festivals, that will be a good thing because it will expand our opportunities for Australians to see these international films. They can gain a greater understanding of our neighbours' cultural issues because that is one of the aims of Balai Bahasa Indonesia Perth, as it is for many other organisations for other language groups.

It is remarkable that in Western Australia there is a limited understanding of the culture of the countries to our north, so we need to increase that understanding. I make the point that if we think of 2050, Indonesia will be—I am using Indonesia because I am an Indonesianist, but many other countries in the area will have a similar economic profile—the fourth largest economy in the world, and Australia, which is currently the twelfth largest, will be the thirtieth largest in the world by then. The idea that we look to our north to somehow do a favour for our neighbours is misunderstanding the relationship. When I lived in Indonesia in 1981, Australia's economy by itself was larger than all the economies of the Association of Southeast Asian Nations forum. Now, for purchasing power, our economy is smaller than those in the ASEAN region and by mid-century it will be a minor part of the Asian economy. If we are not careful and do not create a deeper understanding of the culture of and issues in other countries in our region, we will miss out. It is not the other way around; we need to build understanding and the relationship. If we do not, we will miss out. These types of Asian film festivals—Malaysian, Indonesian or Vietnamese film events—are very important to us. Indeed, if people look around Asia or read Asian media, they will see the hard work being done by countries such as Korea and Japan, and on the soft power side of the relationship, China is also there, but it is probably not as good at the soft power bit as the Koreans in particular are. I think Korea is the outstanding country for soft power in Asia, but there are also the Japanese, who are embedding their relationships into the region because it is the soft power that leads to the hard connections.

That is what Australia and Western Australia are missing out on. I congratulate the Perth USAsia Centre for taking over the In the Zone conference from the University of Western Australia. That is a good effort at that soft power connection. The former Minister for Agriculture and Food, the member for Alfred Cove, attended this year's In the Zone conference in Jakarta, as did I and the member for Willagee. Asian voices need to speak at these types of conferences if we are truly to be connected. Equally, if we are to have increased cultural understanding by Australians of our near neighbours, we need the opportunity to see their interests reflected

in movies and other cultural activities. These are very complicated, sophisticated societies and Australians do not have the necessary depth of understanding. In fact, it surprises me that there are fewer people studying Indonesian at university now than there were 20 years ago. Again, I make the point that I think the reverse Colombo plan that has been set up by the current commonwealth government is an excellent undertaking, and I congratulate the Victorian government for going so deeply into the reverse Colombo plan whereby it is now making a major effort to have its students participate in that commonwealth government initiative. It is a pity that the Western Australian government is not as enthusiastic at building these deep relationships. We are not going to survive to mid-century if we are just selling raw materials. We have to have a sophisticated, deep and broad connection, and it cannot just be about tourists coming here.

As I say, it has to be a much broader economic relationship that needs to stand on the shoulders of a proper cultural understanding. Film festivals have to be a small part of that process. I make the point that learning the language of our region is not just about communication; it is about cultural understanding, because people get that through language. I support the Balai Bahasa Indonesia Perth, because I think it is a great thing. It is a great benefit to people who obtain that broader understanding. I support my good friend the member for Butler in the Labor Party's support for this legislation for the reasons that I have just outlined.

MR P. ABETZ (Southern River) [3.43 pm]: I am pleased to support the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016, as it introduces a number of small but important amendments to the existing legislation. Up to now, the majority of computer games accessible on mobile phones and online have escaped classification, and I am particularly pleased to see that the bill will remedy that situation by introducing suitable classification tools for that type of material. However, the bill does not address another issue that has been continuously brought to my attention by my constituents, and I have noticed it myself—that is, the issue of what is on billboards, car stickers and T-shirts. I continue to receive complaints from constituents who are frustrated at the fact that they and their children are forced to see sexually explicit or obscene car stickers or T-shirts. Strangely, we live in a society in which women's rights have been championed for a long time, yet we seem to be prepared to tolerate women in very sexual poses or in very scantily clad conditions on outdoor advertisements. The subtle message is that women can be treated as sex objects. I believe the time has come to remedy that situation, although I appreciate that this bill is not the vehicle for doing so.

Basically, when a person makes a choice to see a movie, they know the classification and they can go and see it, or if it is a computer game, they know its classification and they can make that choice. However, if I am driving and the car in front of me has an obscene car sticker on the back window or I am in a shopping centre and a person wearing a T-shirt with a sexually explicit message on it stands in front of me or walks towards me, I and young children have no means of preventing ourselves from being exposed to this filth. We had the situation in my area of a Transperth bus that carried a picture of a young lady in a very sexual pose. She was in a lewd sexual pose to promote a movie or a pair of jeans—I cannot quite recall. Numerous people complained about it and the advertising standards people eventually agreed that the advert was inappropriate for a bus, but by the time they gave that verdict, the advert had long disappeared from public view because the movie or the special on the jeans had long passed. There was zero penalty for the perpetrators of what I consider to be a crime against society; all they were told was "You shouldn't have done that." Sexually explicit and vulgar car stickers, T-shirts and billboards are mediums of communication that people cannot turn off by choice. People are forced to see it whether or not they want to see it.

Various Parliaments have released reports about the problem of the sexualisation of children. Currently, the Advertising Standards Bureau administers the national voluntary system of self-regulation through the Advertising Standards Board and the Advertising Claims Board. It is patently obvious to me that self-regulation has not worked. In 2011, the House of Representatives Standing Committee on Social Policy and Legal Affairs conducted an inquiry into this issue and it recommended —

> … that the Attorney-General's Department review by 30 June 2013 the self-regulatory system for advertising …
>
> If the self-regulatory system is found lacking, … the Attorney-General's Department impose a self-funded co-regulatory system on advertising with government input into advertising codes of practice.

In spite of this, five years later, the proliferation of sexual imagery on public billboards, T-shirts and bumper stickers continues to increase. I believe the time has come when we in Western Australia need to show some leadership and ensure that all outdoor advertising, car stickers, T-shirts worn in public and so on are of a standard that would allow them to be G-rated if they were to be given a rating. We could do that in one of two ways: either Western Australia could introduce its own legislation to prevent children and adults being

exposed to sexually explicit and/or vulgar material on billboards, T-shirts or car stickers or, alternatively—I think this would be the preferable way—we could push for legislation at the federal level.

I therefore urge the Attorney General to either introduce in the next Parliament—obviously, it is too late for this Parliament—separate complementary legislation to the classification amendment bill to deal with this matter of great importance, or use his influence at the commonwealth level to ensure that this issue is addressed. I believe that our children are too precious to allow them to be exposed to inappropriate material in the public square.

MRS L.M. HARVEY (Scarborough — Minister for Police) [3.47 pm] — in reply: I thank members for their contributions to the debate on the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016. As members have alluded to, this bill is similar to mirror legislation. My understanding of the situation is that the commonwealth government could, if it so chooses, take full responsibility for the entire classification regime. However, we would prefer to be part of the conversation and interaction with the commonwealth on classifications, so this system of mirror legislation is the appropriate way for us to reflect the decisions on classifications that are made at a commonwealth level, albeit in consultation with the Attorneys General from each state.

It is not a controversial piece of legislation. It allows for the enforcement of various aspects of the classification system that have changed due to amendments to the commonwealth legislation that is reflected in the legislation. I look forward to the passage of the bill through the house. I thank members for their contributions to the second reading debate.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 5 put and passed.

Clause 6: Section 6 amended —

Mr J.R. QUIGLEY: This clause deals with the conditional cultural exemptions, as defined in the commonwealth legislation. The opposition believes that the evolution of this whole area of compliance should be referred to the commonwealth, whereas the minister, in the second reading speech, said it is important that the state remain in conversation with the commonwealth. Can the minister explain to the chamber the government's views on exactly what will constitute a cultural exemption? I refer to the member for Southern River's speech, in that nude and semi-nude, often not just life-size photos of models, but very, very large models in stark repose, could be regarded in this day of commercialism as part of our culture. Given that the government wants to be in dialogue with the commonwealth as to what should be controlled under this legislation, what is the minister's and the government's view about what should qualify as being culturally exempt material?

Mrs L.M. HARVEY: It is the general view of all Attorneys General of each state that the current mechanism of consultation is appropriate. Referring to conditional cultural exemption rules, section 6G of the Classification (Publications, Films and Computer Games) Act 1995, states —

> The Minister may, by legislative instrument, make rules (the ***conditional cultural exemption rules***) prescribing matters:
>
> (a) required or permitted by this Division to be prescribed by the conditional cultural exemption rules; or
>
> (b) necessary or convenient to be prescribed for carrying out or giving effect to this Division.

Is the member asking for examples?

Mr J.R. Quigley: I can clarify that for the minister, if she likes.

Mrs L.M. HARVEY: Thank you.

Mr J.R. QUIGLEY: I understand that there are those federal rules, which allow the federal minister, by executive decree, to declare some materials as culturally exempt. Seeing that the government says that this should not just be referred holus-bolus in due course to the commonwealth government, I was seeking this government's views about how a federal minister should take on board the minister's or the government's views about what is culturally exempt material. It was my proposition that the way this is all evolving, it should be centralised. The minister said that the Western Australian government wants to be heard on this, and I want to hear the Western Australian government's view on what materials the federal minister should consider when applying the set of rules the minister has already referred to.

Mrs L.M. HARVEY: The member has somewhat clarified what he is after, but my understanding is that the way that this operates is that even though the federal minister makes the legislative instrument, the practice is that the draft instrument pertaining to cultural exemptions is sent around to the Attorneys General in each state for their comment and their approval before the commonwealth makes the instrument. For those cultural exemptions, there is consultation, but the owner of the federal legislation—the minister—needs to be the one to make the legislative instrument once that agreement is met.

Mr J.R. QUIGLEY: In view of the consultation that the minister says takes place between the commonwealth and the states, in the last eight years since Mr Barnett has been the Premier and the Liberals have been in government, has there ever been an occasion on which the state has expressed a strong view to the commonwealth that it should not exercise its discretion and allow cultural exemption?

Mrs L.M. HARVEY: My advice is that consultation is required under the intergovernmental agreement that we have with the commonwealth. The cultural exemption rules have been in operation for only a year. As I understand it, during that year, there has not been occasion for the state to oppose any proposals from the commonwealth.

Clause put and passed.

Clause 7: Section 64 amended —

Mr J.R. QUIGLEY: What I want to ask here is applicable to clauses 7, 8, 9, and 10 right through to clause 14, because it is essentially the same amendment to each of the sections therein referred to. Will the minister briefly explain to the chamber the necessity for clause 7, which amends section 64, for example? Clause 7(1) is clear enough, as it is clearing up language, but the proposed amendment contained in subclause (2)(c) states —

> the Board revokes a classification for a publication under section 22CH(1) of that Act and classifies it under section 22CH(4) of that Act,

That is then repeated in the subsequent clauses. What is the necessity for or the utility of that particular amendment?

Mrs L.M. HARVEY: My understanding of these amendments is that should the board make a decision on classification, for instance, to change a classification of an item for sale, this provision gives a 30-day grace period before the seller of that item is committing an offence, should they be advertising that item in the incorrect classification. In effect, this amendment gives retailers selling classified material 30 days to get the classification on the material correct after the decision on reclassification has been made by the board. This is administrative, where it allows that 30-day grace period following a decision in various sections of the legislation.

Clause put and passed.

Clauses 8 to 16 put and passed.

Clause 17: Section 102E amended —

Mr J.R. QUIGLEY: I just want to go to the relevant section of the act for a moment, if I may, and inquire about the deletion of "proposes" and the insertion of "is requested". I want to pick up that section in the original legislation, but perhaps the minister can cut it short by telling us the purpose of this amendment.

Mrs L.M. HARVEY: I refer the member to the explanatory memorandum for clause 17. This clause amends section 102E to reflect changes to section 39 of the commonwealth act. Previously, section 39 of the act allowed the Classification Board to reclassify material either at the request of the commonwealth minister or of its own volition or initiative. The amendment removed the board's power to reclassify on its own initiative, so clause 17 of this bill seeks to amend section 102E to clarify that action taken by the board is in response to a request from the minister.

Mr J.R. QUIGLEY: Under section 102E(1)(a), as it currently stands, the board proposes to reclassify, and that will change to the board being requested to reclassify. The classification has to come on a request, rather than the board being able to, on its own initiative, propose reclassification. Is that correct?

Mrs L.M. HARVEY: It is a matter of consistency of language. The minister may request that the board reclassify publications, so this amendment ensures that there is consistency with section 39 of the commonwealth act, and the commonwealth language around requests and reclassifications.

Clause put and passed.

Clause 18: Section 105 amended —

Mr J.R. QUIGLEY: Section 105 of the act is titled "Articles and computer services, exemptions for". Now the government is deleting section 105(1). I request that the minister inform the chamber of the utility of this deletion.

Mrs L.M. HARVEY: This is somewhat complex, but I will explain it. Previously, the states were responsible for the conditional cultural exemptions. However, the commonwealth has now taken over the classification system, and it is agreed that it is better that these exemptions and classifications are handled under one authority, in consultation with the states. These amendments effectively amend the state legislation to be reflective of this jurisdiction on conditional cultural exemptions now being in the hands of the commonwealth. Further to other amendments in the legislation, the appropriate authority needs to be the commonwealth. These amendments and deletions make it very clear that the cultural exemptions, for the purposes of enforcement, will be consistent with the commonwealth legislation and the commonwealth authority that makes the classification and cultural exemptions.

Clause put and passed.

Clause 19: Section 106 deleted —

Mr J.R. QUIGLEY: Although I do not want to proffer it—we are not the government—I think the answer to this question is relatively self-evident, although the amendment is larger than that made to section 105. Section 106 is to be deleted in its entirety. This relates to exemptions for approved organisations, and is being removed from the Western Australian legislation in its entirety. Perhaps the minister can explain the purpose and utility of that.

Mrs L.M. HARVEY: Clause 19 deletes section 106, which refers to approved organisations or exemptions for specific films et cetera. This section sets out the procedures for applications for exemption by approved organisations. Effectively, section 106 is superseded by sections 6C and 6E of the commonwealth act. This deletion is made because this section is no longer relevant, being covered by sections 6C and 6E of the commonwealth act.

Clause put and passed.

Clauses 20 to 22 put and passed.

Title put and passed.

Third Reading

MRS L.M. HARVEY (Scarborough — Minister for Police) [4.10 pm]: I move —

That the bill be now read a third time.

MR J.R. QUIGLEY (Butler) [4.11 pm]: I do not want to expand much on my comments given in my contribution to the second reading debate on the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016, other than to make the following observation. During my second reading contribution, I said that this area could well be referred to the commonwealth in its entirety. In response to the second reading contributions, the minister indicated that the government always wanted to keep open the jurisdictional power to have input into the classification of what may be exhibited in Western Australia. However, during the debate in consideration in detail, especially in relation to amending sections 105 and 106 of the act—cultural exemptions and the removal of exempt organisations—it became evidently clear that the government's position is that the commonwealth should take over this area. What is it to be? In the legislation there is not a retained power of veto. Therefore, although the commonwealth may wish to consult with the states, if one or two states object to a proposed cultural exemption, there is no power of veto—the commonwealth can proceed to grant the exemption anyway, having regard to the more populous states on the eastern seaboard. In politics, numbers prevail. As John Howard said, politics is relentless arithmetic. I just read on the internet that Mr Trump will be the next President of the United States because of that relentless arithmetic of numbers.

Here we are in Australia, and if this Parliament or the minister in Western Australia wishes to object to the classification of material—the sort of material that you, Mr Acting Speaker (Mr P. Abetz), in your other capacity as a humble member of the chamber speaking on the second reading, wish to object to—there is no power in Western Australia do that. It will come under the auspices and authority of the federal minister. As the Minister for Police representing the Attorney General has explained, the federal minister has a set of criteria within which he will exercise his discretion. There is no power of veto in Western Australia. We can express a view. However, we in Western Australia express a view against the populous eastern states time and again, only to be disregarded. I suppose the starkest example of that is the GST distribution. Liberal ministers in the federal Liberal government have expressed the view that that is not fair, but they are given scant regard and the situation continues as per normal. We are now told it will continue that way for some years into the future, because the federal government is listening to the overwhelming views, at least by numbers, of the Australians on the eastern seaboard. Although the minister expresses the view that the government always wanted to be in the decision-making loop, as

it were, on exemptions and what material can be classified and shown publicly in Western Australia, that is an unrealistic ambition given the amendments the government has put through this evening.

Having said that, we support these amendments and we support what is happening here, because, as the member for Cannington explained, it is a national and international market. It is a market in which people can access things on iPads in primary schools anywhere. Although the classification system is a guide and support for parents, it is certainly no inhibitor for children and others to access the grossest exhibitions imaginable on film. I have to say that society has changed dramatically. We can see beheadings conducted by jihadists. If that was in a commercial film, it would be classified as extreme violence and the film could attract an R rating, but it is shown on the six o'clock news when people are sitting down with their families. These gross and frightening examples of extreme violence are being delivered into people's living rooms while they are having the family meal with their children.

Mr W.J. Johnston: On YouTube, which is available on the internet freely, it is there as well.

Mr J.R. QUIGLEY: The member for Cannington interjects and says that with YouTube it is all there to replay ad nauseam. With these devices now not only can these things be played back on YouTube, but also people no longer have to squint at the little phones because they can project the footage to a 55-inch screen and see it in full living colour horror. These films are published on YouTube by terrorist organisations, of course, without classification and with all offence intended. The classification system is aspirational in its objective. However, it does not any longer, if it ever did, protect us from the publication of this sort of material. Going back to my university days, I can remember novels like Philip Roth's *Portnoy's Complaint*. Roth is now a world-recognised literary genius, but the book *Portnoy's Complaint* was banned in Western Australia. I can remember, I think, that the Communist bookshop, the Star Bookshop, brought it down to the university and sold it on campus as a challenge to the censorship laws because it was beyond the jurisdiction of the Western Australian police. It was quaint to do that in those days. Today a person would not bother, would they? They can just dial it up on the Google search box and it will be delivered right to where they are. That is why I say that the classifications are aspirational, but we support them. They are helpful. I have two daughters, aged seven and nine years, and of course my wife and I are guided by those classifications when accessing DVDs or going to the theatre. I suspect it will be only a month or a year before my nine-year-old—she is just about there—is clued up enough to be able to do the searches on YouTube to get the most disgusting material, and then we fall back on family values and how we bring up our children to avoid exposure to this. The legislation is aspirational. We do, however, support it. We think that there should be a strengthening of the national scheme, which this legislation in part does.

MRS L.M. HARVEY (Scarborough — Minister for Police) [4.19 pm] — in reply: It gives me great pleasure to close debate on the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016. I thank members for their contributions and for dealing with this legislation expeditiously. Obviously, there is support for the legislation. As Western Australians, we never like to cede any authority to the commonwealth, but because of where this classified material sits, the way it is imported and its proliferation, it really does make sense for the commonwealth to be the arbiter and to hold responsibility as a central body for the classification of these materials. We are pleased to have the intergovernmental agreement that allows for collaboration between each of the states' Attorneys General. From time to time as appropriate and, indeed, in response to concerns of the communities that they represent, the Attorneys General discuss classification matters. Once again, I thank members for their contributions and I commend the legislation to the house.

Question put and passed.

Bill read a third time and passed.