

Western Australia

**Child Pornography and Exploitation Material
and Classification Legislation Amendment
Act 2010**

As at 07 Jul 2010

No. 21 of 2010

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Child Pornography and Exploitation Material and Classification Legislation Amendment Act 2010

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Western Australia

**Child Pornography and Exploitation Material
and Classification Legislation Amendment
Act 2010**

No. 21 of 2010

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.

[Assented to 7 July 2010]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Child Pornography and Exploitation Material and Classification Legislation Amendment Act 2010*.

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.

Part 2 — Child exploitation material offences

Division 1 — *The Criminal Code* amended

3. Act amended

This Division amends *The Criminal Code*.

4. Part IV Chapter XXIV inserted

At the end of Part IV insert:

Chapter XXIV — Child exploitation material

216. Terms used

In this Chapter —

child means a person under 16 years of age;

child exploitation material means —

- (a) child pornography; or
- (b) 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 appears to be, a child —
 - (i) in an offensive or demeaning context; or
 - (ii) being subjected to abuse, cruelty or torture (whether or not in a sexual context);

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 appears to be a child —

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

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Part 2 Child exploitation material offences

Division 1 The Criminal Code amended

s. 4

material includes —

- (a) any object, picture, film, written or printed matter, data or other thing; and
- (b) any thing from which text, pictures, sound or data can be produced or reproduced, with or without the aid of anything else;

picture has the meaning given in section 204B.

217. Involving child in child exploitation

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

218. Production of child exploitation material

A person who produces child exploitation material is guilty of a crime and is liable to imprisonment for 10 years.

219. Distribution of child exploitation material

- (1) In this section —

distribute child exploitation material, includes —

 - (a) communicate, exhibit, sell, send, supply, offer or transmit child exploitation material to

another person, or enter into an agreement or arrangement to do so; or

- (b) make child exploitation material available for access by electronic or other means by another person, or enter into an agreement or arrangement to do so.

- (2) A person who distributes child exploitation material is guilty of a crime and is liable to imprisonment for 10 years.
- (3) A person who has possession of child exploitation material with the intention of distributing the material is guilty of a crime and is liable to imprisonment for 10 years.

220. Possession of child exploitation material

A person who has possession of child exploitation material is guilty of a crime and is liable to imprisonment for 7 years.

221A. Defences and exclusions for section 217, 218, 219 or 220

- (1A) It is no defence to a charge of an offence under section 217, 218, 219 or 220 to prove that the accused person did not know the age of the child to whom the charge relates, or the age of the child described, depicted or represented in the material to which the charge relates, or believed that the child was of or over 16 years of age.
- (1) It is a defence to a charge of an offence under section 217, 218, 219 or 220 to prove that —
 - (a) the material to which the charge relates was classified (whether before or after the commission of the alleged offence) under the *Classification (Publications, Films and*

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Part 2 Child exploitation material offences

Division 1 The Criminal Code amended

s. 4

- Computer Games) Act 1995 (Commonwealth), other than as refused classification (RC); or*
- (b) the accused person did not know, and could not reasonably be expected to have known, that the material to which the charge relates describes, depicts or represents a person or part of a person in a way likely to offend a reasonable person; or
 - (c) the material to which the charge relates was —
 - (i) of recognised literary, artistic or scientific merit; or
 - (ii) of a genuine medical character,and that the act to which the charge relates is justified as being for the public good; or
 - (d) the accused person was acting for a genuine child protection or legal purpose, and that the person's conduct was reasonable for that purpose.
- (2) It is a defence to a charge of an offence under section 220 to prove that —
- (a) the material to which the charge relates came into the accused person's possession unsolicited; and
 - (b) as soon as the accused person became aware of the nature of the material the accused person took reasonable steps to get rid of it.
- (3) Nothing in section 219 or 220 makes it an offence —
- (a) for a member or officer of a law enforcement agency to possess or distribute child exploitation material when acting in the course of his or her official duties; or

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Child exploitation material offences
The Criminal Code amended

**Part 2
Division 1
s. 4**

- (b) for a person to possess or distribute child exploitation material in the exercise of a function relating to the classification of such material conferred or imposed on the person under the *Classification (Publications, Films and Computer Games) Act 1995* (Commonwealth).
- (4) In subsection (3)(a) —
law enforcement agency means —
- (a) the Police Force of the State; or
 - (b) the Police Service of the State; or
 - (c) the Office of the Director of Public Prosecutions of the State; or
 - (d) the Corruption and Crime Commission; or
 - (e) any entity of another State or a Territory, the Commonwealth or another country that has functions similar to functions of an entity referred to in paragraph (a), (b), (c) or (d).

221B. Forfeiture

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

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Part 2 Child exploitation material offences

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

s. 5

5. Section 557K amended

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

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

(ia) Chapter XXIV — Child exploitation
material;

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

the deleted

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

child exploitation material (as defined in section 216);

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

or

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

6. Act amended

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

7. Section 3 amended

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

8. Part 7 Division 1 heading amended

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

articles

9. Section 60 deleted

Delete section 60.

10. Section 99 amended

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

11. Section 116 amended

Delete section 116(2).

12. Section 117 amended

(1) In section 117(2a):

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

18+; or

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

RC,

(c) delete paragraph (c).

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

(2a)(a) or (b)

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Part 2 Child exploitation material offences

Division 3 Consequential amendments

s. 13

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

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Child exploitation material offences
Consequential amendments

**Part 2
Division 3
s. 15**

(b) after the item relating to *The Criminal Code* s. 204A
insert:

s. 217
s. 218
s. 219
s. 220

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

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

(2) In Schedule 2:

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

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

16. Act amended

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

17. Section 3 amended

In section 3:

- (a) delete the definition of *approved form* and insert:

approved form means a form approved under
section 8A of the Commonwealth Act;

- (b) insert in alphabetical order:

Convenor means the Convenor of the Review Board
appointed under section 74 of the Commonwealth Act;

18. Section 7 inserted

At the end of Part 1 insert:

7. Films consisting only of classified films

Despite any other provision of this Act, a film —

- (a) that is contained on one device; and
(b) that consists only of 2 or more classified films,

is to be treated, for the purposes of this Act, as if each
of the classified films were on a separate device.

19. Section 66 amended

- (1) In section 66 delete “A person” and insert:
 - (1) A person
- (2) At the end of section 66 insert:
 - (2) Subsection (1) is not contravened by reason only of the exhibition of a classified film —
 - (a) under a title different from that under which it is classified if it is contained on one device that consists only of 2 or more classified films; or
 - (b) with a modification referred to in section 21(2) of the Commonwealth Act.

20. Section 74 amended

- (1) In section 74 delete “A person” and insert:
 - (1) A person
- (2) At the end of section 74 insert:
 - (2) Subsection (1) is not contravened by reason only of the sale of a classified film —
 - (a) under a title different from that under which it is classified if it is contained on one device that consists only of 2 or more classified films; or

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(Commonwealth)

s. 21

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

21. Section 96 amended

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

22. Section 102F amended

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

Convenor

23. Section 106 amended

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

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

- (2) After section 106(2) insert:

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

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

24. Section 108 amended

- (1) In section 108(1) delete “this Part.” and insert:

section 106(1) or (3A).

- (2) In section 108(2):

- (a) delete “organization,” and insert:

organization for the purposes of section 106(1),

- (b) in paragraph (b) after “scientific,” insert:

educational,

- (3) After section 108(2) insert:

- (3A) In considering whether to approve an organization for the purposes of section 106(3A), the Minister or Director must have regard to the following —

- (a) the purpose for which the organization was formed;

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s. 25

- (b) the extent to which the organization carries on activities of an educational, cultural or artistic nature;
- (c) the reputation of the organization in relation to —
 - (i) the screening of films by the organization; or
 - (ii) the demonstration of computer games by the organization,as the case may be;
- (d) the conditions as to admission of persons to —
 - (i) the screening of films by the organization; or
 - (ii) the demonstration of computer games by the organization,as the case may be.

(4) In section 108(4) delete “subsection (2),” and insert:

subsection (2) or (3A),

25. Section 130 amended

In section 130(3) delete “the approved form” and insert:

a form approved by the Minister

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

Part 3

s. 26

26. Section 141 amended

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

Director, Deputy Director or Convenor

Part 4 — Amendments in relation to advertising

27. Act amended

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

28. Section 3 amended

In section 3 insert in alphabetical order:

advertising scheme means the scheme determined from time to time under section 31(1) of the Commonwealth Act;

29. Section 90 amended

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

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

that Act.

(b) delete paragraph (d);

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

or

(2) After section 90(2) insert:

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

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

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

Penalty: a fine of \$5 000.

30. Section 91 amended

- (1) In section 91(1):

- (a) delete paragraph (a);
- (b) delete paragraph (c);
- (c) after each of paragraphs (b) and (d) insert:

or

- (2) After section 91(1) insert:

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

Penalty: a fine of \$5 000.

31. Section 92 amended

- (1) In section 92:

- (a) delete “A person” and insert:

- (1) A person

- (b) after “advertisement for a” insert:

classified

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Part 4 Amendments in relation to advertising

s. 31

(c) after “of another” insert:

classified

(2) At the end of section 92 insert:

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

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

Penalty: \$2 000

(3) A person must not 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 with the classified film complies with the advertising scheme.

Penalty: \$5 000.

32. Section 94 amended

(1) In section 94:

(a) delete “A person” and insert:

(1) A person

(b) after “must not sell a” insert:

classified

(c) after “for another” insert:

classified

(2) At the end of section 94 insert:

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

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

Penalty: \$2 000

- (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.

Penalty: \$5 000.

33. Section 95 amended

- (1) In section 95:
(a) delete “A person” and insert:

(1) A person

- (b) after “must not sell a” insert:

classified

(c) after “for another” insert:

classified

(2) At the end of section 95 insert:

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

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

Penalty: \$2 000

(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

34. Section 102D amended

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

35. Section 152A inserted

After section 151 insert:

152A. Advertisements for unclassified films

- (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.
- (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.

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