

**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)
ACT 1994 No. 31**

NEW SOUTH WALES



Act No. 31, 1994

An Act to amend the Film and Video Tape Classification Act 1984 to provide for the classification and regulation of computer games.
[Assented to 30 May 1994]

**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)
ACT 1994 No. 31**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Film and Video Tape Classification Act 1984 No. 155

SCHEDULE 1—AMENDMENTS

Film and Video Tape Classification (Amendment) Act 1994 No. 31

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Film and Video Tape Classification (Amendment) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Film and Video Tape Classification Act 1984 No. 155

3. The Film and Video Tape Classification Act 1984 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title:

Omit “and video tapes”, insert instead “, and for the classification and regulation of computer games”.

(2) Section 1 (**Short title**):

Omit “Video Tape”, insert instead “Computer Game”.

(3) Section 3 (**Definitions**):

(a) In the definition of “advertisement” in section 3 (1), after “film” where firstly, secondly and fourthly occurring, insert “or computer game”.

(b) In the definition of “censor” in section 3 (1), after “films”, insert “and computer games”.

(c) In section 3 (1), insert in alphabetical order:

“computer game” is defined in section 3A;

“contentious material”, in relation to a computer game, means any material (including game play) contained in the computer game which a reasonable adult would consider unsuitable for viewing or playing by a child under the age of 15 years;

Film and Video Tape Classification (Amendment) Act 1994 No. 31

SCHEDULE 1—AMENDMENTS— *continued*

“**demonstrate**” a computer game includes exhibit, display, screen, or make available for playing, the computer game;

“**unclassified computer game**” means a computer game which has not been classified under this Act, and includes:

- (a) a computer game which has been refused classification; and
- (b) a computer game to which a classification has been assigned otherwise than in accordance with this Act;

(4) Section 3A:

After section 3, insert:

Definition of “computer game”

3A. (1) In this Act, except as provided by subsection (2):

“**computer game**” means:

- (a) a computer program, with or without associated data, capable of generating a display on a television screen, liquid crystal display or similar medium; or
- (b) a computer generated image,
designed for the entertainment of the user.

(2) A reference in this Act to a computer game does not include a reference to:

- (a) a bulletin board; or
- (b) a business, accounting, professional, scientific or educational computer program or computer generated image (unless the program or image contains a computer game which would, if classified, be classified with a “MA (15+)” classification, or be refused classification).

Film and Video Tape Classification (Amendment) Act 1994 No. 31

SCHEDULE 1—AMENDMENTS—*continued*

(3) In this section:

“bulletin board” means a system of electronically stored information accessible by computer through the use of a telecommunications network;

“computer generated image” means electronically recorded data capable, by means of electronic device, of being produced on a television screen, liquid crystal display, or similar medium as an image (including as an image in the form of text);

“computer program” means a set of statements or instructions to be used directly or indirectly in a computer to bring about a certain result;

“entertainment” includes any activity undertaken for the purposes of diversion, recreation, competition or leisure;

“telecommunications network” means a system, or series of systems, for carrying communications by means of guided or unguided electromagnetic energy or both.

(5) Part 2, heading:

Omit “VIDEO TAPES”, insert instead “COMPUTER GAMES”.

(6) Sections 4, 5A:

After “films” wherever occurring, insert “and computer games”.

(7) Section 6 (**Application of Division**):

After “film” wherever occurring, insert “or computer game”.

(8) Section 7 (**Application for classification**):

(a) In section 7 (1) and (3), after “film” wherever occurring, insert “or computer game”.

Film and Video Tape Classification (Amendment) Act 1994 No. 31

SCHEDULE 1—AMENDMENTS—*continued*

(b) After section 7 (2), insert:

(2A) An application for the classification of a computer game must:

(a) be in the form approved by the censor; and
(b) be lodged with the censor together with the following particulars:

- (i) the title of the game;
- (ii) the year of production of the game;
- (iii) the producer or distributor of the game;
- (iv) the country of origin of the game;
- (v) a description of the game play; and

(c) be accompanied by the fee prescribed by the regulations; and

(d) if the computer game contains any material (including game play) likely to be contentious—be accompanied by a video tape recording of that material; and

(e) if the censor so requires—be accompanied by a copy of any advertising matter relating to the computer game.

(2B) If the applicant is of the opinion that the computer game would, if classified, be classified with a “G”, “G (8+)” or “M (15+)” classification, the applicant may also submit with the application an assessment of the game, signed by or on behalf of the applicant and prepared by a person authorised by the censor for the purpose, which includes:

- (a) a recommended classification of the game; and
- (b) any consumer advice appropriate to the game.

(2c) If the censor disagrees with the recommended classification, the censor is to give a written notice to the applicant:

- (a) stating the particulars of the disagreement; and
- (b) requesting the applicant to make a written submission to the censor within 14 days.

Film and Video Tape Classification (Amendment) Act 1994 No. 31SCHEDULE 1—AMENDMENTS—*continued*

(2D) If the censor notifies an applicant under subsection (2C), a decision is not to be made concerning the application until:

- (a) a written submission is received from the applicant within 14 days after the notice was given; or
- (b) a period of 14 days has elapsed after the notice was given.

(9) Section 7A:

After section 7, insert:

Production of certain computer games for classification

7A. (1) If the censor is of the opinion that:

- (a) a computer game contains or is likely to contain contentious material; and
- (b) the game is being or will be sold or distributed for sale in New South Wales,

the censor may, by notice in writing given to the producer or distributor of the game, require the producer or distributor to submit an application in accordance with section 7 for classification of the game.

(2) A person to whom such a notice is given must comply with the notice within 3 working days after it is given.

Maximum penalty: 20 penalty units.

(10) Section 8:

Omit the section, insert instead:

Screening of films, and demonstration of computer games, for classification

8. (1) The censor may:

- (a) require a film that is the subject of an application for classification to be screened; or
- (b) require a computer game that is the subject of an application for classification to be demonstrated.

SCHEDULE 1—AMENDMENTS—*continued*

(2) If the censor requires a film to be screened or a computer game to be demonstrated:

- (a) the censor may require the applicant to lodge a copy of the film or computer game with the censor; and
- (b) the film or computer game is to be screened or demonstrated as and when required by the censor.

(3) A screening or demonstration is to be carried out at the risk of the applicant for classification.

(4) At a screening of a film or a demonstration of a computer game, the applicant for classification, not more than 4 representatives of the applicant, and such other persons as are approved by the censor, are entitled to be present.

(5) If a copy of a film or computer game is lodged with the censor under subsection (2), the censor may retain the copy for such period as the censor may determine.

(11) Section 9AA:

Before section 9A, insert:

Classification of computer games

9AA. (1) Except as provided by subsection (2), the censor is to classify a computer game for which an application for classification has been made:

- (a) as a “G” computer game, if the censor is of the opinion that the game is suitable for all ages; or
- (b) as a “G (8+)” computer game, if the censor is of the opinion that the game cannot be recommended for viewing or playing by children under the age of 8 years; or
- (c) as an “M (15+)” computer game, if the censor is of the opinion that the game cannot be recommended for viewing or playing by children under the age of 15 years; or
- (d) as an “MA (15+)” computer game, if the censor is of the opinion that the game depicts, expresses or otherwise deals with sex, violence or coarse language

SCHEDULE 1—AMENDMENTS—*continued*

in such a manner as to make the game unsuitable for viewing or playing by children under the age of 15 years.

(2) The censor is to refuse to classify a computer game for which an application for classification has been made if the computer game:

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult; or
- (b) depicts in any form a person (whether engaged in sexual activity or otherwise) who is, or who is apparently, a child in a manner that is likely to cause offence to a reasonable adult; or
- (c) promotes, incites or instructs in matters of crime or violence.

(3) When classifying a computer game, the censor may specify as part of the classification a warning or warnings, relating to the contents of the game, that are to be displayed when the game is sold or displayed for sale.

(4) The censor may make recommendations in respect of the consumer advice that the censor determines is applicable to the computer game.

(5) The censor is to keep a record of all decisions made by the censor under this section.

(12) Section 9B:

After section 9A (“**X** classification of films in ACT operates as classification refused”), insert:

“R (18+)” or “X (18+)” classification of computer games in ACT operates as classification refused

9B. While a computer game is classified as an “R (18+)” computer game, or as an “X (18+)” computer game, under the Classification of Publications Ordinance 1983 of the Australian Capital Territory, it is taken to have been refused classification under this Act.

SCHEDULE 1—AMENDMENTS—*continued***(13) Section 10 (Approval of advertisements):**

- (a) In section 10 (1) and (3), after “film” wherever occurring, insert “or computer game”.
- (b) From section 10 (2), omit “film is classified”, insert instead “film or computer game is classified”.
- (c) Omit section 10 (2) (b), insert instead:
 - (b) that the film is unlikely to be classified as an “R” film, or that the computer game is unlikely to be classified as an “MA (15+)” computer game; and

(14) Section 10A:

After section 10, insert:

Trailers advertising computer games

10A. (1) If a computer game includes a trailer advertising an unclassified computer game, the censor is to refuse to classify the computer game.

(2) If a computer game includes a trailer advertising a classified computer game, the censor is not to classify the computer game:

- (a) as a “G” computer game—if the advertised computer game is classified as a “G (8+)”, “M (15+)” or “MA (15+)” computer game; or
- (b) as a “G (8+)” computer game—if the advertised computer game is classified as an “M (15+)” or “MA (15+)” computer game; or
- (c) as an “M (15+)” computer game—if the advertised computer game is classified as an “MA (15+)” computer game.

(15) Section 11 (Notice of decision):

- (a) Omit “or 10” insert instead “, 9AA, 10 or 10A”
- (b) After “film” wherever occurring, insert “or computer game”.

(16) Section 11A (Review after 2 years by censor on own initiative):

- (a) From section 11A (2) (b), omit “film or”, insert instead “film or computer game concerned or for”.
- (b) In section 11A (3), (5) and (6), after “film” wherever occurring, insert “or computer game”.

Film and Video Tape Classification (Amendment) Act 1994 No. 31SCHEDULE 1—AMENDMENTS—*continued*

(17) Sections 12–14:

- (a) From sections 12 (1) and 13, omit “10 or 11A” wherever occurring, insert instead “9AA, 10, 10A or 11A”.
- (b) In sections 12 (1), 13 and 14 (1), after “film” wherever occurring, insert “or computer game”.

(18) Section 15 (**Revocation of classification of film or computer game**):

- (a) After “film” wherever occurring, insert “or computer game”
- (b) In section 15 (4), after “films”, insert “or computer games”.

(19) Section 16 (**Retention of films and computer games by censor**):

- (a) After “a film”, insert “or computer game”.
- (b) Omit “any part of the film and any advertisement lodged with the film”, insert instead “the computer game, or any part of the film or computer game, and any advertisement lodged with the film or computer game”.
- (c) From section 16 (b), omit “part”, insert “computer, or the part of the film or computer game,”.

(20) Section 17 (**Effect of alteration of classified film or computer game**):

- (a) After “classified film” in section 17 (1) insert “or a classified computer game”.
- (b) After “unclassified film” in section 17 (1), insert “or an unclassified computer game”.
- (c) After “film” in section 17 (2), insert “or computer game”.

(21) Section 17A:

After section 17, insert:

“Declassification” of contentious computer games

17A. A computer game that has been classified is taken to be unclassified for the purposes of this Act if it contains contentious material (whether available through use of a code or otherwise) which has not been brought to the attention of the censor.

SCHEDULE 1—AMENDMENTS—*continued*

(22) Parts 3 and 4, headings:

Omit “AND VIDEO TAPES” wherever occurring.

(23) Part 4A:

After Part 4, insert:

PART 4A—REGULATION OF COMPUTER GAMES

Sale and demonstration etc, of unclassified computer games prohibited

34A. (1) A person must not sell, or display or distribute for the purposes of sale, or demonstrate in a public place, an unclassified computer game.

Maximum penalty:

- (a) in the case of an unclassified computer game that is subsequently classified as a “G”, “G (8+)” or “M (15+)” computer game—5 penalty units in the case of a corporation, and 1 penalty unit in any other case;
- (b) in the case of an unclassified computer game that is subsequently classified as an “MA (15+)” computer game—10 penalty units in the case of a corporation, and 2 penalty units in any other case;
- (c) in the case of a computer game that has been refused classification under section 9AA (2) or that was, at the time of the offence, unclassified and that is subsequently refused classification under that subsection—50 penalty units in the case of a corporation, and 20 penalty units or imprisonment for 12 months (or both) in any other case.

(2) Proceedings for an offence under this section in respect of an unclassified computer game (other than a computer game which has been refused classification) are not to be instituted until the computer game has been classified or refused classification.

Use of advertisements

34B. (1) A person must not use any advertisement approved under Part 2 in relation to a computer game

SCHEDULE 1—AMENDMENTS—*continued*

otherwise than in the form in which the advertisement was SO approved, unless the censor or appeal censor has approved, in writing, of that use.

(2) A person must not use any advertisement approved under Part 2 in relation to a computer game except in accordance with the conditions (if any) to which the approval is subject.

(3) A person must not sell, or distribute for the purposes of sale, a computer game (whether classified or unclassified) in association with any advertisement which has been disapproved under Part 2.

Maximum penalty: 50 penalty units in the case of a corporation, and 10 penalty units or imprisonment for 6 months (or both) in any other case.

Advertisement for unclassified computer games prohibited

34C. (1) A person must not publish an advertisement in relation to an unclassified computer game unless the advertisement is approved under section 10 for use before the game is classified.

Maximum penalty:

- (a) in the case of the publication of an advertisement for an unclassified computer game that is subsequently classified as an “M (15+)” computer game—5 penalty units in the case of a corporation, and 1 penalty unit in any other case;
- (b) in the case of the publication of an advertisement for an unclassified computer game that is subsequently classified as an “MA (15+)” computer game—10 penalty units in the case of a corporation, and 2 penalty units in any other case;
- (c) in the case of the publication of an advertisement for a computer game that has been refused classification or that was, at the time of the offence, unclassified and that is subsequently refused classification—50 penalty units in the case of a corporation, and 10 penalty units or imprisonment for 6 months (or both) in any other case.

SCHEDULE 1—AMENDMENTS—*continued*

(2) A person does not contravene subsection (1) in respect of the publication of an advertisement for an unclassified computer game which, after the date of publication, is classified as a “G” or “G (8+)” computer game.

(3) Proceedings for an offence under this section in respect of the publication of an advertisement for an unclassified computer game (other than a computer game which has been refused classification) are not to be instituted until the computer game has been classified or refused classification.

Restrictions applying to “MA (15+)” computer games

34D. (1) A person must not sell a computer game classified as an “MA (15+)” computer game to a child under the age of 15 years unless the child’s parent or guardian consents to the particular sale or the person who sells the computer game is the parent or guardian of the child.

(2) A person must not demonstrate a computer game classified as an “MA (15+)” computer game in any part of a public place unless entry to that part of the public place is restricted to adults and to children under the age of 15 years who are in the care of a parent or guardian while in that part of the place.

Maximum penalty (subsections (1) and (2)): 10 penalty units in the case of a corporation, and 5 penalty units in any other case.

(3) An adult who is exercising parental control over a child under the age of 15 years is, while exercising that control, taken to be the parent of the child for the purposes of this section (even if not actually a parent of the child).

(4) It is a defence to a prosecution for an offence under this section if the defendant proves that the defendant or the defendant’s employee or agent had reasonable grounds for believing, and did in fact believe:

- (a) that the child in respect of whom the alleged offence was committed had attained the age of 15 years at the date of the alleged offence; or
- (b) in the case of an offence under subsection (1), that the child’s parent or guardian consented to the particular sale.

SCHEDULE 1—AMENDMENTS—*continued***Classified computer games containing advertisements for other computer games**

34E. (1) A person must not sell, display for the purposes of sale, or demonstrate in a public place, a computer game that contains a classified computer game (“**the main computer game**”) and an advertisement in relation to another computer game unless the game advertised is of the same classification as, or is of a lower classification than, the main computer game.

Maximum penalty: 50 penalty units in the case of a Corporation, and 10 penalty units in any other case.

(2) The hierarchy of computer game classification is as follows:

- “G” is a lower classification than “G (8+)”, “M (15+)” or “MA (15+)”;
- “G (8+)” is a lower classification than “M (15+)” or “MA (15+)”;
- “M (15+)” is a lower classification than “MA (15+)”.

False advertisement of classification

34F. A person must not publish an advertisement in relation to a classified computer game which indicates:

- (a) that the computer game is unclassified; or
- (b) that the computer game has a classification other than the classification it has been given under Part 2.

Maximum penalty: 50 penalty units in the case of a corporation, and 10 penalty units in any other case.

Markings and warnings on classified computer games

34G. (1) A person must not sell, display for the purposes of sale, or demonstrate in a public place, a classified computer game unless the advertising matter relating to the game (including the container, wrapping or casing in which the game is so sold, displayed or demonstrated) bears:

- (a) the markings determined under subsection (2) in relation to the classification given to the game; and

SCHEDULE 1—AMENDMENTS—*continued*

(b) any warning or warnings specified in relation to the game under section 9AA (3).

Maximum penalty: 50 penalty units in the case of a corporation, and 10 penalty units in any other case.

(2) The censor is to determine, by notice published:

- if there is an arrangement in operation under section 4—in the Commonwealth Gazette; or
- if there is no arrangement in operation under section 4—in the Gazette,

markings for the purposes of this Part in relation to different classifications of computer games.

Display and sale of improperly marked unclassified computer games prohibited

34H. A person must not sell, or display for the purposes of sale, an unclassified computer game if the container, wrapping or casing in which the game is displayed or sold bears a marking or other matter that indicates or suggests that the game has been classified.

Maximum penalty: 75 penalty units in the case of a corporation, and 20 penalty units or imprisonment for 12 months (or both) in any other case.

Keeping together of certain classified and unclassified computer games prohibited

34I. A person must not, on any premises on or from which classified computer games are sold or displayed for the purposes of sale, keep or have possession of any unclassified computer games.

Maximum penalty: 75 penalty units in the case of a corporation, and 20 penalty units or imprisonment for 12 months (or both) in any other case.

Display of notice on premises

34J. A person must not sell, or display for the purposes of sale, a computer game on or from premises unless there is displayed on those premises a notice which complies with the regulations.

Maximum penalty: 10 penalty units in the case of a corporation, and 5 penalty units in any other case.

SCHEDULE 1—AMENDMENTS—*continued***Matters constituting demonstration of computer games**

34K. In any proceedings under this Act or the regulations, and without affecting the liability of any person for any offence against this Act or the regulations, a person is taken to demonstrate a computer game in a public place:

- (a) if the person conducts the demonstration of the computer game; or
- (b) if the person causes the computer game to be demonstrated; or
- (c) if the person has the superintendence or management of the public place in which the computer game is demonstrated.

(24) Section 36 (Copying of certain unclassified films and computer games prohibited):

(a) After section 36 (1), insert:

(1A) A person must not make a copy of the whole or any part of an unclassified computer game for the purposes of sale.

Maximum penalty: 75 penalty units in the case of a corporation, and 20 penalty units or imprisonment for 12 months (or both) in any other case.

- (b) In section 36 (2) and (4), after “subsection (1)” wherever occurring, insert “or (1A)”.
- (c) In section 36 (2) and (4), after “film” wherever occurring, insert “or computer game”.
- (d) After section 36 (3), insert:

(3A) A person does not contravene subsection (1A) in respect of the copying of an unclassified computer game which is subsequently classified as a “G”, “G (8+)” or “M (15+)” computer game.

SCHEDULE 1—AMENDMENTS—*continued*(25) Section 38 (**Exemptions**):

In section 38 (2), after “film”, insert “or computer game”.

(26) Section 39 (**Search warrants**):

(a) In section 39 (4) (a), after “premises;”, insert “and”.

(b) At the end of section 39 (4) (c), insert:

; and

(d) on the premises or elsewhere, to demonstrate, by means of any suitable apparatus or equipment (whether found on the premises or not) any computer game found in or on the premises.

(27) Section 43 (**Evidence**):

(a) In section 43 (1) (a)–(d) and (e)–(g), after “film” wherever occurring, insert “or computer game”.

(b) After section 43 (1) (d1), insert:

(d2) that a computer game has been classified as an “R (18+)” computer game, or as an “X (18+)” computer game, under the Classification of Publications Ordinance 1983 of the Australian Capital Territory;

(28) Section 46 (**Forfeiture of films and computer games on conviction**):

(a) After “33”, insert “34A, 34E, 34G, 34H, 34I”.

(b) Omit section 46 (a), insert instead:

(a) such films or computer games as are specified in the order; and

(c) After section 46 (b), insert:

(b1) in the case of a contravention of section 34A, such apparatus or equipment used in the demonstration of computer games; and

(d) In section 46 (c), after “films”, insert “or computer games”.

Film and Video Tape Classification (Amendment) Act 1994 No. 31

SCHEDULE 1—AMENDMENTS—*continued*(29) Schedule 1 (**Savings, transitional and other provisions**):

After clause 13, insert:

*Film and video Tape Classification (Amendment)
Act 1994*

**Existing computer games generally not affected by
amending Act**

14. (1) In this clause:

“existing computer game” means a computer game sold or distributed for sale in New South Wales before the commencement of Schedule 1 (23) to the Film and Video Tape Classification (Amendment) Act 1994.

(2) Nothing in this Act applies to or in respect of an existing computer game.

(3) However, this Act does apply to or in respect of an existing computer game if the censor, under section 7A, requires the producer or distributor of the game to submit an application for classification of the game, and the game is subsequently classified or refused classification.

*[Minister’s second reading speech made in—
Legislative Council on 5 May 1994
Legislative Assembly on 12 May 1994]*