



New South Wales

Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2010 No 74

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Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2010 No 74

Act No 74, 2010

An Act to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* to make further provision for the enforcement of the classification scheme for publications, films and computer games; and for other purposes. [Assented to 25 October 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2010*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63

[1] Section 4 Definitions

Omit the definition of *submittable publication* from section 4 (1).

Insert instead:

submittable publication has the same meaning as in the Commonwealth Act, and includes a publication called in by the Director under:

- (a) section 46 of this Act, or
- (b) a provision of an Act of another State or a Territory that corresponds to that section.

[2] Section 40 Advertisements with feature films

Omit section 40 (1) and (2). Insert instead:

- (1) A person must not, during a program for the exhibition of a classified film (*the feature film*), publicly exhibit an advertisement for another film or a computer game unless the advertised film or advertised computer game has the same classification as (or has a lower classification than) the feature film.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

- (2) A person must not sell a film that contains a classified film (*the feature film*) and an advertisement for another film or a computer game unless the advertised film or advertised computer game has the same classification as (or has a lower classification than) the feature film.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

[3] Section 40 (3)

Omit “film”.

[4] Section 41 Advertisements with computer games

Omit section 41 (1). Insert instead:

- (1) A person must not sell, or publicly demonstrate, a computer game that contains a classified computer game (*the main computer game*) and an advertisement for another computer game or a film

unless the advertised game or advertised film has the same classification as (or has a lower classification than) the main computer game.

Maximum penalty: 50 penalty units for an individual,
100 penalty units for a corporation.

[5] Section 41 (2)

Omit the subsection. Insert instead:

(2) The hierarchy of classification is as follows:

- (a) G is a lower classification than PG, M, MA 15+ or R 18+,
- (b) PG is a lower classification than M, MA 15+ or R 18+,
- (c) M is a lower classification than MA 15+ or R 18+,
- (d) MA 15+ is a lower classification than R 18+.

Note. The highest classification for computer games under the National Classification Code is MA 15+. The highest classification for films under that Code is R 18+.

[6] Section 58 Evidence

Omit “section 87 of” from section 58 (1).

[7] Section 58A

Insert after section 58:

58A Proof of classification by agreement

- (1) Subject to subsection (2), if a person is charged with an offence under this Act, the prosecution may, prior to the trial, give the accused a notice:
 - (a) setting out:
 - (i) the title or apparent title (if any) of the publication, film or computer game, and
 - (ii) particulars of the offence in relation to which the notice is served, and
 - (b) stating that the accused is entitled to view the publication, film or computer game, and
 - (c) inviting the accused to indicate, by completing and signing a statement to that effect set out in the notice and returning the notice to an address set out in the notice, that the accused agrees that, on a specified date, the publication, film or computer game:
 - (i) was classified at the specified classification, or

- (ii) was unclassified but would, if classified, have been of the specified classification,
as the case may require, and
- (d) stating that if the accused does not indicate his or her agreement in accordance with paragraph (c) within the period specified in the notice (being not less than the prescribed period), the accused will, if found guilty of the offence specified in the notice, be liable to pay an amount equal to:
 - (i) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a publication, film or computer game was unclassified but would, if classified, have been of a particular classification—the fee for classification of the publication, film or computer game, or
 - (ii) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a publication, film or computer game was classified at a particular classification—the fee for obtaining a certificate of a kind described in section 58 specifying the classification of the publication, film or computer game at that date.
- (2) This section does not apply where the offence with which a person is charged involves an allegation that a publication, film or computer game was unclassified but would, if classified, be classified at a classification other than X 18+ or RC.
- (3) A person served with a notice under this section must, on making a written request to the prosecution within 14 days from the date of service of the notice, be allowed to view the publication, film or computer game the subject of the notice at a time and place fixed by the prosecution.
- (4) In proceedings for an offence under this Act, a notice under this section containing a statement, completed and signed by the accused, that the accused agrees that, on a specified date, the publication, film or computer game:
 - (a) was classified at the specified classification, or
 - (b) was unclassified but would, if classified, have been of a specified classification,is evidence of, and in the absence of evidence to the contrary is proof of, the matter agreed.

- (5) If:
- (a) a person served with a notice under this section does not deliver the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice, and
 - (b) the person is found guilty of the offence specified in the notice,
- the prosecution is entitled, on application to the court making the finding of guilt, to recover from the person an amount equal to the fee described in the notice.
- (6) In proceedings in which an application referred to in subsection (5) is made, a certificate signed or purporting to be signed by the Commissioner of Police and stating that:
- (a) a person was served with a notice set out in the certificate and did not return the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice, and
 - (b) a specified amount was paid as the fee described in the notice,
- is evidence of, and in the absence of evidence to the contrary is proof of, the facts stated in the certificate.
- (7) If:
- (a) a notice is served under this section in relation to an offence involving an allegation that a publication, film or computer game was unclassified but would, if classified, have been of a specified classification, and
 - (b) the person served with the notice does not return the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice, and
 - (c) the publication, film or computer game is subsequently classified at a higher classification than the classification specified in the notice,
- this section applies as if the notice had specified that higher classification.
- (8) In this section, ***prescribed period*** means 14 days from the date of service of the notice or, if the person served with the notice requests that he or she be allowed to view the publication, film or computer game the subject of the notice, 14 days from the time fixed by the prosecution for the viewing.

[8] Section 59 Commencement of proceedings

Omit section 59 (1). Insert instead:

- (1) Proceedings for an offence under this Act in relation to a film, publication or computer game that is unclassified at the time of the alleged offence:
 - (a) are not to be commenced until:
 - (i) the film, publication or computer game has been classified, or
 - (ii) the accused, by notice under section 58A, agrees that the publication, film or computer game if classified would have been the classification agreed, and
 - (b) are not to be commenced later than 12 months after the date on which:
 - (i) the film, publication or computer game was classified, or
 - (ii) the accused returned the notice under section 58A, whichever is relevant.

[9] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Classification (Publications, Films and Computer Games)
Enforcement Amendment Act 2010*

[Agreement in principle speech made in Legislative Assembly on 8 September 2010
Second reading speech made in Legislative Council on 19 October 2010]

BY AUTHORITY