

[Act 1995 No 63]



New South Wales

# Classification (Publications, Films and Computer Games) Enforcement Bill 1995

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

### Overview of Bill

This Bill is part of a national scheme to revise censorship laws in co-operation with the Commonwealth and other States and Territories. The new classification scheme covers publications (ie any written or pictorial matter), films and computer games, but not broadcasting services (ie television or radio programs).

The Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* provides the machinery for the classification of publications, films and computer games in accordance with the National

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\* Amended in committee—see table at end of volume.

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Classification Code (as agreed on between the Commonwealth, States and Territories). The commencement of the Commonwealth Act has been delayed until complementary State and Territory enforcement legislation is enacted.

The object of this Bill is to give effect to the national classification scheme by

- (a) providing for the enforcement of classification decisions made under the Commonwealth Act, and
- (b) prohibiting the publishing (which includes the sale, exhibition, display, distribution and demonstration) of certain publications, films and computer games.

The new national classification scheme is essentially a continuation of the existing scheme applying in New South Wales. Both the *Indecent Articles and Classified Publications Act 1975* and the *Film and Computer Game Classification Act 1984* will be replaced by the proposed Act.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** sets out the object of the proposed Act (as referred to in the above overview).

**Clause 4** contains definitions of certain terms used in the proposed Act. A number of integral terms (eg *advertisement*, *computer game*, *film* and *publication*) are defined in the Commonwealth Act and are set out in a note following clause 4. The term *classified* means classified under the Commonwealth Act. An example of a classification common to films, publications and computer games is RC (an abbreviation of Refused Classification) which indicates that the material is banned from sale or exhibition. The term *sell* has an extended meaning, and it includes exchange or hire.

**Clause 5** provides that a person is taken to publicly exhibit a film, or publicly demonstrate a computer game, if the person arranges or conducts the exhibition or demonstration or has the superintendence or management of the public place.

## **Part 2     Films**

**Clause 6** prohibits the sale or public exhibition of unclassified films or films classified RC or X.

**Clause 7** prohibits the sale or public exhibition of classified films with different titles under which, or in different forms in which, they have been classified.

**Clause 8** requires persons who sell or publicly exhibit classified films to display classification notices for films.

**Clause 9** prohibits the sale or delivery of RC, X or R films to minors (the penalty is higher than the penalty for the offence of selling RC or X films generally).

**Clause 10** prohibits parents or guardians from permitting minors to attend the public exhibition of RC, X or R films.

**Clause 11** makes it an offence for minors over 15 to buy, or attend the public exhibition of, RC, X or R films.

**Clause 12** prohibits the public exhibition of R films in the presence of minors.

**Clause 13** prohibits the public exhibition of MA films in the presence of minors under 15.

**Clause 14** prohibits the private exhibition of RC, X or R films in the presence of minors.

**Clause 15** requires the classification markings (including classification information) determined under the Commonwealth Act to be displayed on the outside of films before being sold.

**Clause 16** prohibits the keeping or possession of unclassified, RC or X films on premises where classified films are sold.

**Clause 17** makes it an offence to leave in a public place (or on private premises without the occupier's permission) an RC or X film.

**Clause 18** prohibits the possession or copying of RC or X films for the purposes of sale or exhibition.

### **Part 3 Publications**

**Clause 19** prohibits the sale or delivery of submittable publications (ie unclassified publications that are likely to cause offence to reasonable adults) and RC publications.

**Clause 20** provides that Category 1 restricted publications are required to be contained in sealed packages and to display the determined classification markings and information.

**Clause 21** contains more stringent requirements in respect of Category 2 restricted publications. For example, these publications can only be displayed in restricted publications areas.

**Clause 22** requires publications classified as Unrestricted to display the relevant classification information.

**Clause 23** prohibits the publishing of publications with misleading or deceptive classification markings.

**Clause 24** prohibits the sale, delivery or showing of submittable publications, RC publications and Category 1 or 2 restricted publications to minors.

**Clause 25** makes it an offence to leave in a public place (or to display in a manner as to be visible to people in a public place) submittable or RC publications or Category 1 and 2 restricted publications. In the case of Category 1 material, it is a defence if the material was sold in a shop and it was packaged in the required manner. It will also be an offence to leave such material on private premises without the occupier's permission.

**Clause 26** prohibits the possession or copying of submittable or RC publications for the purposes of sale.

### **Part 4 Computer games**

**Clause 27** prohibits the sale or public demonstration of unclassified computer games or RC computer games.

**Clause 28** prohibits the sale or public demonstration of classified computer games with different titles under which, or in different forms in which, they have been classified.

**Clause 29** requires computer game classification notices to be prominently displayed to the public in places where computer games are sold or demonstrated.

**Clause 30** prohibits the sale or delivery of RC or MA (15+) computer games to minors.

**Clause 31** makes it an offence for a minor over 15 to buy an RC computer game or to attend the public demonstration of such a game.

**Clause 32** prohibits the public demonstration of MA (15+) computer games in the presence of minors under 15 unless they are accompanied by parents or guardians.

**Clause 33** prohibits the private demonstration of RC computer games in the presence of minors.

**Clause 34** provides for the display of determined markings and consumer advice in respect of computer games.

**Clause 35** prohibits the keeping or possession of unclassified or RC computer games on premises where classified computer games are sold.

**Clause 36** makes it an offence to leave in a public place (or on private premises without the occupier's permission) an RC computer game.

**Clause 37** prohibits the possession or copying of RC computer games for the purposes of sale or demonstration.

## **Part 5      Advertisements**

**Clause 38** prohibits the publishing of advertisements for films, publications or computer games unless such advertisements have been approved under the Commonwealth Act.

**Clause 39** prohibits the publishing of advertisements for unclassified, RC or x films, for submittable or RC publications, or for unclassified or RC computer games.

**Clause 40** provides that an advertisement exhibited or sold with a feature film cannot advertise a film that has a higher classification than the feature film (ie you must not sell a feature film that contains an advertisement for another film unless the advertised film has the same classification as, or a lower classification than, the feature film).

**Clause 41** prohibits the sale or demonstration of a computer game that advertises another computer game unless the advertised game has the same classification as, or a lower classification than, the main computer game.

**Clause 42** requires advertisements for classified films, publications and computer games to contain the relevant classification information about the film, publication or computer game.

**Clause 43** prohibits the publishing of misleading or deceptive advertisements.

**Clause 44** restricts the publishing of advertisements for Category 1 or Category 2 restricted publications.

**Clause 45** provides that publications containing advertisements for films, Category 1 or 2 restricted publications or computer games must contain a list of the classification symbols and information for that material.

## **Part 6    General regulatory and administrative provisions**

### **Division 1    Calling in powers**

**Clause 46** authorises the Director of the Commonwealth Classification Board (previously known as the Chief Censor) to require the publisher of a submittable publication (ie an unclassified publication that is likely to cause offence to a reasonable adult) that is being published in New South Wales to submit an application under the Commonwealth Act for classification of the publication.

**Clause 47** authorises the Director to “call in”, for classification, any computer game that contains contentious material (ie material that a reasonable adult would consider to be unsuitable for viewing or playing by a person under 15).

**Clause 48** authorises the Director to “call in” advertisements, for approval under the Commonwealth Act, that are intended to be used in connection with submittable publications or with classified films or computer games.

### **Division 2    Restricted publications areas**

**Clause 49** sets out the requirements relating to restricted publications areas (ie premises where Category 2 restricted publications can only be sold or

displayed). These requirements include the display of a conspicuous notice on the outside of the premises prohibiting minors from entering and warning the public that some material on the premises may cause offence.

**Clause 50** makes it an offence for the person in charge of a restricted publications area to permit a minor to enter the area.

### **Division 3 Exemptions**

**Clause 51** enables the Minister to exempt a person or body (or classes of persons or bodies) from the operation of any provision of the proposed Act. Such an exemption is effected by a notice published in the Gazette.

**Clause 52** provides a general exemption for law enforcement agencies and for persons exercising functions relating to classification.

**Clause 53** provides a specific exemption for public libraries which hold any MA or restricted material (ie Category 1 or 2 restricted publications, R or MA films or MA (15+) computer games) from certain offence provisions relating to that material so long as the library, whether by its rules or otherwise, meets certain requirements (eg access to such material must be restricted and borrowing restricted to adults).

### **Division 4 Miscellaneous**

**Clause 54** enables the exhibitor or seller of a film or computer game who suspects that the exhibition or sale to another person is or would be an offence under the proposed Act to demand the name, age and address of the other person. The proposed section also enables a police officer to demand these particulars if an offence under the proposed Act is suspected of being committed.

### **Part 7 Procedure**

**Clause 55** empowers a police officer to apply for a search warrant authorising the entry and search of premises in respect of which an offence under the proposed Act is being committed. This power includes a power to seize things connected with the offence.

**Clause 56** requires things seized pursuant to a search warrant to be returned to the premises unless proceedings are brought or the person claiming them does not satisfy a Local Court that the things are not connected with an offence under the proposed Act.

**Clause 57** provides that proceedings for offences under the proposed Act are to be dealt with summarily before a Local Court or the Supreme Court.

**Clause 58** provides for certificate evidence from the Director (or Deputy Director) of the Classification Board about the classification of films, publications and computer games.

**Clause 59** provides that proceedings for offences in respect of unclassified films, publications or computer games cannot be commenced until the material has been classified.

**Clause 60** provides that if a person is convicted of an offence under this Act, the court may order the person to pay costs, in addition to any other costs that the court may order, to cover the amount of any fee incurred by the prosecution for the classification of the material concerned and for the provision of certificate evidence under the Commonwealth Act.

**Clause 61** provides for the forfeiture to the Crown of seized material following conviction.

**Clause 62** provides that each director or person concerned in the management of a corporation that contravenes a provision of the proposed Act is also taken to have contravened the same provision.

**Clause 63** prevents proceedings being brought against a person for publishing an obscene libel or an indecent article if it is for the purposes of an application for classification under the Commonwealth Act or if the libel or article is, or is part of, a classified film, publication or computer game.

## **Part 8     Miscellaneous**

**Clause 64** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 65** gives effect to the Schedule of savings and transitional provisions.

**Clause 66** gives effect to the Schedule of amendments to the *Crimes Act 1900*.

**Clause 67** gives effect to the Schedule of consequential amendments to other Acts.

**Clause 68** repeals the *Film and Computer Game Classification Act 1984* and the *Indecent Articles and Classified Publications Act 1975* (and the regulations made under those Acts).

**Schedule 1** contains savings and transitional provisions, including a power to make regulations of a savings and transitional nature consequent on the enactment of the proposed Act. Generally, films, publications and computer games classified under the existing censorship scheme are taken to be classified under the new scheme with the corresponding classification.

**Schedule 2** amends the *Crimes Act 1900*. Proposed section 578B restates the offence of possessing child pornography to be inserted in the *Crimes Act 1900* by the proposed *Crimes Amendment (Child Pornography) Act 1995* which is not yet enacted. That offence is based on the existing classification scheme that is to be replaced by the new classification scheme being enforced by this proposed Act. The proposed section 578B will bring the child pornography offence into line with the new classification scheme.

Proposed section 578C re-enacts the existing section 6 of the *Indecent Articles and Classified Publications Act 1975* which prohibits the publishing of indecent articles.

Proposed section 578D provides for the issuing of search warrants authorising police officers to enter and search premises for child pornography and indecent articles.

Proposed section 578E re-enacts the existing section 10 of the *Indecent Articles and Classified Publications Act 1975* which prohibits advertising the business of selling sex aids or publicly displaying sex aids to persons who have not consented to the display.

The remainder of **Schedule 2** contains amendments to repeal provisions connected with the child pornography offence as based on the old classification scheme.

**Schedule 3** contains amendments to Acts that are consequential on the enactment of the proposed Act. Included in the list of Acts to be amended is the *Search Warrants Act 1985*.