

[Act 2001 No 95]



New South Wales

Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2001

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* so as:

- (a) to reflect and provide for the enforcement of the *Classifications (Publications, Films and Computer Games) Act 1995* of the Commonwealth as amended by the *Classification (Publications, Films and Computer Games) Amendment Act 2001* (the **amended Commonwealth Act**), and
 - (b) to create offences relating to the use of on-line services to make available, or supply, objectionable matter or matter that is unsuitable for minors, and
 - (c) to provide for the issue of penalty notices for certain offences against the Act prescribed by the regulations.
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Outline of provisions

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 appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* set out in Schedules 1 and 2.

Clause 4 is an amendment to the *Fines Act 1996* that is consequential on Schedule 1 [22] of the proposed Act which inserts a provision for the issue of penalty notices.

Schedule 1 General amendments

The Principal Act provides for the enforcement of classification decisions made under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth and prohibits the publishing (which includes the sale, exhibition, display, distribution and demonstration) of certain publications, films and computer games. The *Classification (Publications, Films and Computer Games) Amendment Act 2001* of the Commonwealth makes a number of amendments to the Commonwealth Act that require complementary amendments to the State enforcement legislation. With minor exceptions, Schedule 1 contains amendments to the Principal Act for that purpose.

Definitions

Schedule 1 [1] inserts definitions of *exempt computer game* and *exempt film* into section 4 (1) of the Principal Act to refer to definitions in the amended Commonwealth Act so as to ensure uniformity of interpretation. It also inserts a definition of *Review Board* to refer to the Classification Review Board established by the Commonwealth Act.

Schedule 1 [3] and **[4]** make consequential amendments to a note.

Schedule 1 [1] also inserts definitions of *international flight* and *international voyage* into the Principal Act.

Schedule 1 [2] substitutes the definition of *place* in section 4 (1) of the Principal Act to ensure that it does not include a vessel on an international voyage or an

aircraft on an international flight. The Principal Act applies to, for example, the exhibition of films in a “public place” or private exhibitions in a “place”.

Application of Principal Act

Schedule 1 [5] inserts proposed section 4A into the Principal Act. Proposed section 4A provides that the Principal Act does not apply to exempt films and exempt computer games or to broadcasting services to which the *Broadcasting Services Act 1992* of the Commonwealth applies. Exempt films and exempt computer games are defined in section 5B of the amended Commonwealth Act. They include business, accounting, professional, scientific, educational, current affairs, hobbyist, sporting, family, live performance, musical presentation, religious and community or cultural films and business, accounting, professional, scientific and educational computer games. A film is not an exempt film if it contains material that would be likely to cause it to be classified M or higher (that is, it must fall within the G or PG classification). A computer game is not an exempt computer game if it contains material that would be likely to cause it to be classified M (15+) or higher. Films and computer games are also not exempt if they contain an advertisement for an unclassified film or computer game, an advertisement that has been refused approval or an advertisement for a film or computer game classified M or MA (15+), respectively, or higher.

Under Division 6 of Part 2 of the amended Commonwealth Act, the Classification Board can also issue certificates stating that unclassified films and computer games are exempt films or computer games.

Reclassifications—periods of grace

Section 22B (3) of the amended Commonwealth Act enables the Classification Board to revoke the classification or consumer advice for a publication, film or computer game classified on the basis that it is the same or similar to a previously classified publication, film or computer game in the absence of a copy of the publication, film or computer game after a copy becomes available if the case so requires.

Section 97A of the amended Commonwealth Act provides the Classification Board with the power to reclassify a publication or film where it was classified in response to an enforcement application by the former Censorship Board or a censor under the law of one State or Territory only or where, in response to an enforcement application, different classifications were made in different States or Territories.

Schedule 1 [6], [9], [10], [14], [16] and [17] amend sections 15 (4), 20 (2), 21 (3), 34 (5), 42 (2) and 43 (3), respectively, of the Principal Act to apply a 30-day period of grace to requirements under those sections to display the correct determined

markings (and relevant consumer advice, if any) relevant to the classification of the films, publications or computer games when they are reclassified under section 39, 97A or 22B (3) of the amended Commonwealth Act.

Packaging of Category 1 restricted publication

Section 20 (1) of the Principal Act provides that a person must not sell or deliver a publication classified Category 1 restricted unless it is contained in a sealed package made of opaque material and both the publication and the package bear the determined markings.

Schedule 1 [8] inserts proposed section 20 (1A) into the Principal Act to provide that if the sale or delivery takes place in a restricted publications area, the package need not be sealed but on delivery must be contained in an opaque wrapper. The provision is made subject to any conditions imposed under section 13A (2) of the amended Commonwealth Act, which enables the Classifications Board to impose a condition that a publication it classifies as Category 1 restricted not be sold, displayed for sale or delivered unless it is contained in a sealed package made of plain, opaque material.

Schedule 1 [6] makes a consequential amendment.

Sale or delivery of publications subject to conditions and consumer advice for Unrestricted publications

Section 13A of the amended Commonwealth Act allows the Board, when classifying a publication Unrestricted, to impose a condition that it be sold in a sealed package or when classifying a publication Category 1 restricted, to impose a condition that it be sold in a plain opaque sealed package. Section 20 (2) of the amended Commonwealth Act provides that if the Board classifies a publication Unrestricted or a film or computer game G the Board may determine consumer advice giving information about the content of the publication, film or game.

Schedule 1 [11] inserts proposed sections 22A and 22B into the Principal Act.

Proposed section 22A makes it an offence to sell or deliver a publication classified Unrestricted or Category 1 restricted subject to a condition imposed under section 13A of the amended Commonwealth Act except in accordance with the condition.

Proposed section 22B makes it an offence to sell a publication classified Unrestricted in respect of which the Board has determined consumer advice under section 20 (2) of the amended Commonwealth Act unless the consumer advice is displayed on the publication or the packaging of the publication.

Pay and play computer games

Schedule 1 [13] inserts proposed section 34 (4A) and (4B) into the Principal Act.

Proposed section 34 (4A) makes it an offence to make a computer game available for playing on a pay and play basis (for example, a coin operated arcade game) unless the determined markings relevant to the classification of the computer game and the relevant consumer advice, if any, are displayed on the device used for playing the game.

Proposed section 34 (4B) provides that if two or more computer games are available for playing on a device referred to in section 34 (4A), the determined markings and consumer advice to be displayed on the device are those relevant to the computer game with the highest classification under the Commonwealth Act.

Publishing of advertisements

Under section 13 of the amended Commonwealth Act the Board may declare when classifying an issue of a periodical that the classification applies to future issues of the periodical. Section 13 (5) provides for the revocation of such a declaration in certain circumstances. Section 21A of the amended Commonwealth Act provides for the revocation of classifications of films or computer games that are found to contain contentious material that was not brought to the Board's attention when the classification was made.

Schedule 1 [15] substitutes section 38 (1) of the Principal Act to extend the categories of advertisements for films, publications or computer games that cannot be published to include advertisements whose approval under section 29 of the Commonwealth Act has been revoked under section 13 (5) or 21A of that Act.

Calling in films for classification

Schedule 1 [18] inserts proposed section 46A into the Principal Act.

Proposed section 46A confers a new power on the Director of the Classification Board to call in films for classification. Currently the Director has the power to call in submittable publications (section 46), computer games (section 47) and advertisements (section 48). The proposed section is complementary to section 23A of the amended Commonwealth Act.

The proposed section provides that where the Director has reasonable grounds to believe that an unclassified film is not an exempt film and that the film is being published in New South Wales (or that it will be published in New South Wales), the Director may, by notice in writing given to the publisher of the film, require the publisher to submit an application for classification of the film.

Calling in computer games for classification

Section 47 of the Principal Act currently empowers the Director to call in a computer game where the Director has reasonable grounds to believe that it contains or is likely to contain contentious material and is being, or the Director has reasonable grounds to believe will be, published in New South Wales.

Schedule 1 [19] inserts proposed section 47 (1A) into the Principal Act to extend the call-in power to where the Director has reasonable grounds to believe that an unclassified computer game is not an exempt computer game and is, or the Director has reasonable grounds to believe will be, published in New South Wales.

The proposed section is complementary to section 24 (1A) of the amended Commonwealth Act.

Schedule 1 [20] amends section 47 (3) of the Principal Act to require notice of a decision to call-in an unclassified computer game under proposed section 47 (1A) to be published in the Commonwealth Gazette.

Calling in a publication, film or computer game for reclassification and obtaining copies for review

Schedule 1 [21] inserts proposed sections 48A and 48B into the Principal Act.

Section 39 of the Commonwealth Act vests a power in the Classifications Board to reclassify a publication, film or computer game 2 years after its initial classification. Section 39 (5) of the amended Commonwealth Act enables the Director to obtain a copy of the relevant publication, film or computer game to enable reclassification to take place. Section 44A of the amended Commonwealth Act ensures that the Classification Board can obtain a copy of a film, publication or computer game where the applicant for review of a classification decision is not the original applicant.

Proposed section 48A gives the Director the power to require the publisher of a publication, film or computer game that the Classification Board proposes to reclassify under section 39 to submit a copy of the publication, film or computer game for the purpose of reclassifying it. The proposed section complements section 39 (5) of the amended Commonwealth Act.

Proposed section 48B gives the Director the power to require the original applicant or the publisher of a publication, film or computer game to make a copy of it available for the purposes of a review of a classification under the Commonwealth Act by a person other than the original applicant for classification of the publication, film or computer game concerned. The proposed section complements section 44A of the amended Commonwealth Act.

Penalty notices

Schedule 1 [22] inserts proposed section 61A into the Principal Act.

Proposed section 61A enables penalty notices to be issued for certain offences under the Act to be prescribed by the regulations.

Savings and transitional provisions

Schedule 1 [23] and **[24]** amend clause 1 of Schedule 1 to the Principal Act to enable the making of savings and transitional regulations.

Schedule 1 [25] inserts proposed Part 3 into Schedule 1 to the Principal Act.

Proposed Part 3 contains certain transitional provisions.

Schedule 2 Amendments relating to on-line services

Schedule 2 inserts proposed Part 5A (sections 45A–45E) into the Principal Act. The proposed Part creates offences relating to the use of on-line services to make available, or supply, to persons objectionable matter or matter that is unsuitable for minors.

Proposed section 45A defines various words and expressions used in the proposed Part, including *Internet content*, *matter unsuitable for minors*, *objectionable matter* and *on-line service*.

Proposed section 45B provides for the application of the Part. It enables regulations to exclude certain on-line services and on-line services provided to prescribed persons or classes of persons from the application of the Part. It also makes it clear that a person is not guilty of an offence under the Part by reason only that the person owns or has the control or management of the operation of an on-line service or facilitates access to or from an on-line service by means of transmission, downloading, intermediate storage, access software or similar capabilities.

Proposed section 45C makes it an offence in the circumstances described in the section (including being reckless as to whether or not matter is objectionable) to make available or supply to another person objectionable matter by means of an on-line service.

Proposed section 45D makes it an offence in circumstances described in the section (including being reckless as to whether or not matter is unsuitable for minors) to make available or supply to another person any matter unsuitable for minors. The

Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2001
[Act 2001 No 95]

Explanatory note

section makes it a defence to prove that the access to the matter was subject to an approved access system within the meaning of the section.

Proposed section 45E sets out the meaning of “reckless” for the purposes of the proposed Part.