



New South Wales

Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2007

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* (**the State Act**) so as:

- (a) to make consequential amendments arising from the enactment of the *Classification (Publications, Films and Computer Games) Amendment Act 2007* of the Commonwealth, and
- (b) to make other amendments, including amendments relating to the giving of exemptions from the State Act for approved organisations carrying out educational, cultural or artistic activities.

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.

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 provides for the repeal of the proposed Act after all the amendments have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments consequential on enactment of Classification (Publications, Films and Computer Games) Amendment Act 2007 of the Commonwealth

Schedule 1 makes amendments consequential on the enactment of the *Classification (Publications, Films and Computer Games) Amendment Act 2007* of the Commonwealth (***the Commonwealth amending Act***). State legislation provides complementary administrative and enforcement mechanisms for the classification of publications, films and computer games under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth (***the Commonwealth Act***).

Schedule 1 [1] amends section 4 to substitute the definition of ***approved form*** as a consequence of the insertion of section 8A into the Commonwealth Act by the Commonwealth amending Act, which empowers the Commonwealth Minister (and not the Director of the Classification Board) to approve a form for a notice about classifications.

Schedule 1 [2] amends section 4 to insert a definition of ***Convenor*** (meaning the Convenor of the Classification Review Board), consistently with the Commonwealth Act. The definition is used in provisions inserted by the Commonwealth amending Act and by the proposed Act.

Schedule 1 [3] inserts a new section 5A, in the same terms as section 14A inserted in the Commonwealth Act by the Commonwealth amending Act. The new section 14A of the Commonwealth Act clarifies that, when several previously classified films are brought together for distribution in a single device (eg a DVD), the product does not require classification simply because of the fact of compilation. Similarly, new section 5A of the State Act ensures that a single device that consists of several previously classified films is not caught by the prohibition in section 6 of the sale or public exhibition of unclassified films.

Schedule 1 [4] amends section 7 (which prohibits the sale or public exhibition of a classified film if it is sold or exhibited under a different title from that under which it was classified or with alterations or additions to the form in which it was classified) so that the section is not contravened by the sale or public exhibition of a film:

- under a title different from that under which it was classified if it is contained on one device (eg a DVD) that consists only of 2 or more classified films, or

- with modifications referred to in section 21 (2) of the Commonwealth Act as amended by the Commonwealth amending Act (including the addition or removal of navigation functions, or the addition or removal of material providing a description or translation of audio or visual content that would not cause a higher classification to be given).

The amendment made by Schedule 1 [4] complements that made by Schedule 1 [3], in that new section 5A will ensure that a compilation on a single device (eg a DVD) is not “unclassified” for the purposes of section 6, whereas new section 7 (2) (a) will ensure that such a compilation will not be subject to the prohibition in section 7 (1).

Schedule 1 [5] amends section 42 to remove a reference to the Director of the Classification Board, consistently with amendments to section 8 of the Commonwealth Act by the Commonwealth amending Act, which substitutes the Commonwealth Minister for the Director as the authority to exercise the function of determining markings for classifications.

Schedule 1 [6] amends section 48B to replace a reference to the Director of the Classification Board with a reference to the Convenor of the Classification Review Board, consistently with amendments to section 44A of the Commonwealth Act by the Commonwealth amending Act. Both sections relate to the power to require a copy of a publication, film or computer game to be made available for a review by the Classification Review Board of a classification decision.

Schedule 1 [7] amends section 58 to add a reference to the Convenor of the Classification Review Board, consistently with amendments to section 87 of the Commonwealth Act by the Commonwealth amending Act. Both sections relate to the giving of evidentiary certificates.

Schedule 2 Other amendments

Schedule 2 [1] and [2] omit the note to section 4, which sets out definitions contained in the Commonwealth Act, and references in section 4 to the note. The note was included when the Bill for the State Act was originally introduced but becomes out of date when definitions in the Commonwealth Act are amended.

Schedule 2 [3] amends section 48 to allow the Director to call in a copy of advertisements used or intended to be used for unclassified as well as classified films (consistently with the calling in of a copy of advertisements for computer games).

Schedule 2 [4] replaces section 51, which deals with the power of the Director of the Classification Board to grant exemptions from provisions of the State Act. The principal change is to provide for the exemption (subject to any ministerial directions or guidelines) of organisations that carry on activities of an educational, cultural or artistic nature. The opportunity has been taken to reorder the provisions of the section.

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Explanatory note

Schedule 2 [5] and [6] amend Schedule 1 to the State Act to enable regulations of a savings or transitional nature to be made in connection with the proposed Act and to enact specific savings provisions in connection with the substitution of section 51 dealing with exemptions.



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Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* consequentially on the enactment of amendments to the corresponding Commonwealth Act, and to make further provision for the giving of exemptions from the State Act; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2007</i> .	3 4
2 Commencement	5
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	6 7
(2) Schedule 1 [6] commences:	8
(a) on the date of commencement of items 7 and 14 of Part 1 of Schedule 2 to the <i>Classification (Publications, Films and Computer Games) Amendment Act 2007</i> of the Commonwealth or the date of assent to this Act, whichever is the later, but	9 10 11 12
(b) if those items commence on different dates and either or both of those dates are after the date of assent to this Act—on the later of those dates.	13 14 15
3 Amendment of Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63	16 17
The <i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i> is amended as set out in Schedules 1 and 2.	18 19
4 Repeal of Act	20
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	21 22
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	23 24

Schedule 1	Amendments consequential on enactment of Classification (Publications, Films and Computer Games) Amendment Act 2007 of the Commonwealth	1 2 3 4 5
	(Section 3)	6
[1] Section 4 Definitions		7
	Omit the definition of <i>approved form</i> in section 4 (1). Insert instead:	8
	<i>approved form</i> means a form approved under section 8A of the Commonwealth Act.	9 10
[2] Section 4 (1)		11
	Insert in alphabetical order:	12
	<i>Convenor</i> means the Convenor of the Review Board appointed under section 74 of the Commonwealth Act.	13 14
[3] Section 5A		15
	Insert after section 5:	16
	5A Films consisting only of classified films	17
	Despite any other provision of this Act, a film:	18
	(a) that is contained on one device, and	19
	(b) that consists only of 2 or more classified films,	20
	is to be treated, for the purposes of this Act, as if each of the classified films were on a separate device.	21 22
[4] Section 7 Classified films not to be sold or exhibited under different title or in altered form		23 24
	Insert at the end of the section:	25
	(2) Subsection (1) is not contravened by the sale or exhibition of a classified film:	26 27
	(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	28 29 30
	(b) with modifications referred to in section 21 (2) of the Commonwealth Act,	31 32
	or both.	33

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Schedule 1 Amendments consequential on enactment of Classification (Publications,
Films and Computer Games) Amendment Act 2007 of the Commonwealth

- | | |
|---|---|
| [5] Section 42 Advertisements to contain determined markings and consumer advice | 1 |
| | 2 |
| Omit “by the Director” from section 42 (1) (b) (i). | 3 |
| [6] Section 48B Obtaining copies for review | 4 |
| Omit “Director” from section 48B (1). Insert instead “Convenor”. | 5 |
| [7] Section 58 Evidence | 6 |
| Omit “Director or Deputy Director” from section 58 (1). | 7 |
| Insert instead “Director, Deputy Director or Convenor”. | 8 |

Schedule 2 Other amendments

		1
	(Section 3)	2
[1] Section 4 Definitions		3
Omit “(see note at the end of this section)” wherever occurring in section 4 (1).		4
[2] Section 4, note		5
Omit the note.		6
[3] Section 48 Calling in advertisements		7
Omit “classified” from section 48 (1) (b).		8
[4] Section 51		9
Omit the section. Insert instead:		10
51 Exemptions		11
(1) Power to exempt		12
The Director may:		13
(a) on application by any person, make a written direction that this Act does not, to the extent and subject to any condition specified in the direction, apply to or in respect of any film, publication, computer game or advertisement, or		14 15 16 17
(b) on application made in accordance with subsection (9), make a written direction that this Act, or any specified provision of this Act, does not, to the extent and subject to any condition specified in the direction, apply to an organisation approved under subsection (2) in relation to the exhibition of a film at an event (being a film and event specified in the direction), or		18 19 20 21 22 23 24
(c) on application made in accordance with subsection (10), make a written direction that this Act, or any specified provision of this Act, does not, to the extent and subject to any condition specified in the direction, apply to an organisation approved under subsection (5) in relation to all or any of its activities or functions that relate to films or computer games.		25 26 27 28 29 30 31
(2) Approval of organisations for the purposes of subsection (1) (b)		32
The Director, by notice published in the Commonwealth Gazette, may, on application, approve an organisation for the purposes of subsection (1) (b). An approval takes effect on the date of publication of the notice.		33 34 35 36

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Schedule 2 Other amendments

- | | | |
|-----|---|----|
| (3) | In considering whether to approve an organisation under subsection (2), the Director is to have regard to the following matters: | 1 |
| | | 2 |
| | | 3 |
| | (a) the purpose for which the organisation was formed, | 4 |
| | (b) the extent to which the organisation carries on activities of a medical, scientific, educational, cultural or artistic nature, | 5 |
| | | 6 |
| | | 7 |
| | (c) the reputation of the organisation in relation to the screening of films, | 8 |
| | | 9 |
| | (d) the conditions as to admission of persons to the screening of films by the organisation. | 10 |
| | | 11 |
| (4) | The Director may revoke an approval given under subsection (2) if, because of a change in any matter referred to in subsection (3), the Director considers that it is no longer appropriate that the organisation be approved. | 12 |
| | | 13 |
| | | 14 |
| | | 15 |
| (5) | Approval of organisations for the purposes of subsection (1) (c) | 16 |
| | The Director, by notice published in the Commonwealth Gazette, may, on application, approve an organisation for the purposes of subsection (1) (c) if the organisation carries on activities of an educational, cultural or artistic nature. An approval takes effect on the date of publication of the notice. | 17 |
| | | 18 |
| | | 19 |
| | | 20 |
| | | 21 |
| (6) | In considering whether to approve an organisation under subsection (5), the Director is to have regard to the following matters: | 22 |
| | | 23 |
| | | 24 |
| | (a) the purpose for which the organisation was formed, | 25 |
| | (b) the extent to which the organisation carries on activities of an educational, cultural or artistic nature, | 26 |
| | | 27 |
| | (c) the reputation of the organisation in relation to: | 28 |
| | (i) the screening of films, or | 29 |
| | (ii) the possession or demonstration of computer games, as the case may be, | 30 |
| | | 31 |
| | (d) the conditions as to admission of persons to: | 32 |
| | (i) the screening of films by the organisation, or | 33 |
| | (ii) the demonstration of computer games by the organisation, | 34 |
| | | 35 |
| | as the case may be. | 36 |

(7)	The Director may revoke an approval given under subsection (5) if, because of a change in any matter referred to in subsection (6), the Director considers that it is no longer appropriate that the organisation be approved.	1 2 3 4
(8)	Notification of refusal or revocation of approval	5
	The Director is to notify an organisation in writing of the Director's decision:	6 7
	(a) to refuse an application for approval, or	8
	(b) to revoke an approval,	9
	within 30 days after the date of the decision and must give reasons for the decision. Revocation of an approval takes effect on the date of the decision to revoke or on a later date specified in the notice.	10 11 12 13
(9)	Application for exemption	14
	An application by an approved organisation for an exemption under subsection (1) (b) must:	15 16
	(a) be in writing, and	17
	(b) specify the film that the organisation intends to exhibit and the event at which the film is to be exhibited, and	18 19
	(c) be accompanied by a synopsis of the story or events depicted in the film, and the prescribed fee.	20 21
(10)	An application by an approved organisation for an exemption under subsection (1) (c) must:	22 23
	(a) be in writing, and	24
	(b) specify the extent of the exemption sought, and	25
	(c) be accompanied by the prescribed fee.	26
(11)	Notification of refusal of exemption	27
	The Director must notify an organisation in writing of a decision to refuse an application for an exemption within 30 days after the date of the decision and must give reasons for the decision.	28 29 30
(12)	Ministerial directions and guidelines	31
	In considering whether:	32
	(a) to make a direction under subsection (1), or	33
	(b) to give an approval under subsection (2) or (5), or	34
	(c) to revoke such an approval,	35
	the Director is to give effect to any directions or guidelines issued by the Minister in relation to the application of this Act.	36 37

[5] Schedule 1 Savings and transitional provisions	1
Insert at the end of clause 1 (1):	2
<i>Classification (Publications, Films and Computer Games)</i>	3
<i>Enforcement Amendment Act 2007</i>	4
[6] Schedule 1	5
Insert at the end of the Schedule:	6
 Part 5 Provisions consequent on Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2007	 7 8 9
 12 Exemptions	 10
(1) Any directions or approvals given by the Director under section 51 and in force immediately before the commencement of this clause are taken to have been given under section 51 as substituted by the <i>Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2007</i> .	11 12 13 14 15
(2) Any applications for directions or approvals made under section 51 and pending immediately before the commencement of this clause are taken to have been made under section 51 as substituted by the <i>Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2007</i> .	16 17 18 19 20
(3) Any directions or guidelines given by the Minister under section 51 and in force immediately before the commencement of this clause are taken to have been given under section 51 as substituted by the <i>Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2007</i> .	21 22 23 24 25