



New South Wales

Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005

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*:

- (a) to remove the current prohibition in relation to the sale of films that are classified X 18+ under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, and to remove the current prohibition on the public exhibition of such films, and
- (b) to ensure that films classified X 18+ are only sold from restricted publications areas, and
- (c) to increase penalties for allowing minors to access adult material.

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 30 days after the date of assent or the commencement of Schedule 1 to the *Classification (Publications,*

Films and Computer Games) Amendment Act 2004 of the Commonwealth, whichever is the later.

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

Clause 4 amends the *Crimes Act 1900*.

Schedule 1 Amendment of Classification (Publications, Films and Computer Games) Enforcement Act 1995

Schedule 1 [1] removes the prohibition under section 6 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (the **Principal Act**) on selling or publicly exhibiting a film classified X 18+. **Schedule 1 [2] and [16]** make consequential amendments.

Schedule 1 [2], [5], [8]–[10], [12] and [17] amend provisions of the Principal Act to increase the penalties for offences relating to allowing minors to access adult material.

Schedule 1 [3] inserts proposed section 6A into the Principal Act. The proposed section creates certain offences in relation to the display, sale, delivery and publication of films classified X 18+.

Schedule 1 [6] amends section 9 of the Principal Act to create an offence of selling or delivering to a minor a film classified X 18+, or an unclassified film that would, if classified, be classified X 18+. **Schedule 1 [4] and [7]** make consequential amendments.

Schedule 1 [13] amends section 14 of the Principal Act to create an offence for privately exhibiting in the presence of a minor a film classified X 18+ or an unclassified film that would, if classified, be classified X 18+. **Schedule 1 [11]** makes a consequential amendment.

Section 16 of the Principal Act provides that it is an offence to keep a film classified RC or X 18+ on any premises where classified films are sold. **Schedule 1 [14]** amends section 16 to provide that it is a defence to a prosecution for the offence of keeping a film classified X 18+ on such premises if the film was kept in a restricted publications area.

Schedule 1 [15] amends section 17 of the Principal Act to provide that it is an offence for a person to leave in a public place or, without the occupier's permission, on private premises, a film classified RC, X 18+, R 18+ or MA 15+ or an unclassified film that would, if classified, be classified in one of those categories.

Schedule 1 [18]–[21] make amendments to the Principal Act in relation to advertising films, publications and computer games classified X 18+.

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Explanatory note

Schedule 1 [22] amends section 63 of the Principal Act to provide that proceedings can not be brought against any person for publishing an obscene libel or indecent article if the libel or article is, or is part of, a film, publication or computer game that is classified X 18+.



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Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005

No. , 2005

A Bill for

An Act to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* to remove the prohibition on the sale of films classified “X 18+”; to ensure that films classified “X 18+” are only sold from restricted publications areas; to increase penalties for allowing minors to access adult material; 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 (X 18+ Films) Act 2005</i> .	3 4
2 Commencement	5
This Act commences 30 days after the date of assent or the commencement of Schedule 1 to the <i>Classification (Publications, Films and Computer Games) Amendment Act 2004</i> of the Commonwealth, whichever is the later.	6 7 8 9
3 Amendment of Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63	10 11
The <i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i> is amended as set out in Schedule 1.	12 13
4 Amendment of Crimes Act 1900 No 40	14
The <i>Crimes Act 1900</i> is amended by omitting “or X 18+” from paragraph (e) of the definition of <i>article</i> in section 578C (1).	15 16

Schedule 1	Amendment of Classification	1
	(Publications, Films and Computer	2
	Games) Enforcement Act 1995	3
	(Section 3)	4
[1]	Section 6 Sale or public exhibition of unclassified or RC films prohibited	5
	Omit “or X 18+” from section 6 (a).	6
[2]	Section 6	7
	Omit the last dot point paragraph. Insert instead:	8
	• in the case of an unclassified film that is subsequently	9
	classified X 18+—75 penalty units for an individual, 150	10
	penalty units for a corporation	11
	• in the case of a film classified RC or an unclassified film	12
	that is subsequently classified RC—200 penalty units or	13
	imprisonment for 2 years for an individual, 400 penalty	14
	units for a corporation.	15
[3]	Section 6A	16
	Insert after section 6:	17
	6A X 18+ films	18
	If a film is classified X 18+, a person must not:	19
	(a) display the film for sale except in a restricted publications	20
	area, or	21
	(b) deliver the film to a person who has not made a direct	22
	request for it, or	23
	(c) deliver the film to a person unless it is contained in a	24
	package made of opaque material, or	25
	(d) publish the film unless it displays the determined markings	26
	and the classification number allocated to the film by the	27
	Board.	28
	Maximum penalty: 150 penalty units for an individual, 300	29
	penalty units for a corporation.	30
[4]	Section 9 Sale of certain films to minors prohibited	31
	Omit “or X 18+” wherever occurring from section 9 (1).	32

Classification (Publications, Films and Computer Games) Enforcement
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Schedule 1 Amendment of Classification (Publications, Films and Computer Games)
Enforcement Act 1995

[5] Section 9 (1)	1
Omit the penalty. Insert instead:	2
Maximum penalty: 200 penalty units or imprisonment for 2 years for an individual, 400 penalty units for a corporation.	3 4
[6] Section 9 (1A)	5
Insert after section 9 (1):	6
(1A) A person must not sell or deliver to a minor a film classified X 18+, or an unclassified film that would, if classified, be classified X 18+.	7 8 9
Maximum penalty: 150 penalty units or 12 months imprisonment for an individual, 300 penalty units for a corporation.	10 11
[7] Section 9 (3)	12
Omit “subsection (2)”. Insert instead “subsection (1A) or (2)”.	13
[8] Section 9 (4)	14
Omit the penalty. Insert instead:	15
Maximum penalty: 75 penalty units for an individual, 150 penalty units for a corporation.	16 17
[9] Section 12 R 18+ films not to be publicly exhibited in presence of minors	18
Omit the penalty from section 12 (1). Insert instead:	19
Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.	20 21
[10] Section 13 MA 15+ films not to be publicly exhibited in presence of minors under 15	22 23
Omit the penalty from section 13 (1). Insert instead:	24
Maximum penalty: 40 penalty units for an individual, 80 penalty units for a corporation.	25 26
[11] Section 14 Private exhibition of RC, X 18+ or R 18+ films in presence of minors	27 28
Omit “or X 18+” wherever occurring.	29
[12] Section 14 (1)	30
Omit the penalty. Insert instead:	31
Maximum penalty: 200 penalty units.	32

[13] Section 14 (1A)	1
Insert after section 14 (1):	2
(1A) A person must not privately exhibit in the presence of a minor a film classified X 18+ or an unclassified film that would, if classified, be classified X 18+.	3
	4
	5
Maximum penalty: 75 penalty units.	6
[14] Section 16 Keeping unclassified, RC or X 18+ films with other films	7
Omit section 16 (2). Insert instead:	8
(2) It is a defence to a prosecution for an offence under this section to prove that:	9
	10
(a) the defendant did not know, and could not reasonably have known, that the film was on the premises, or	11
	12
(b) for a film classified X 18+—the film was kept in a restricted publications area.	13
	14
[15] Section 17 Leaving RC, X 18+, R 18+ or MA 15+ films in certain places	15
Omit section 17 (1). Insert instead:	16
(1) A person must not, without reasonable excuse, leave in a public place or, without the occupier's permission, on private premises:	17
	18
(a) a film classified RC or an unclassified film that would, if classified, be classified RC, or	19
	20
(b) a film classified X 18+ or an unclassified film that would, if classified, be classified X 18+, or	21
	22
(c) a film classified R 18+ or an unclassified film that would, if classified, be classified R 18+, or	23
	24
(d) a film classified MA 15+ or an unclassified film that would, if classified, be classified MA 15+.	25
	26
Maximum penalty:	27
(a) for paragraph (a)—200 penalty units or imprisonment for 2 years for an individual, 500 penalty units for a corporation, and	28
	29
	30
(b) for paragraph (b)—100 penalty units for an individual, 250 penalty units for a corporation, and	31
	32
(c) for paragraph (c)—50 penalty units for an individual, 100 penalty units for a corporation, and	33
	34
(d) for paragraph (d)—25 penalty units for an individual, 50 penalty units for a corporation.	35
	36

Classification (Publications, Films and Computer Games) Enforcement
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Schedule 1 Amendment of Classification (Publications, Films and Computer Games)
Enforcement Act 1995

[16] Section 18 Possession or copying of films for the purpose of sale or exhibition	1 2
Omit “or X 18+” wherever occurring from section 18 (1) and (2).	3
[17] Section 18	4
Omit the penalty. Insert instead:	5
Maximum penalty: 200 penalty units or 2 years imprisonment for an individual, 500 penalty units for a corporation.	6 7
[18] Section 39 Certain films, publications and computer games not to be advertised	8 9
Omit “or X 18+” from section 39 (1) (a).	10
[19] Section 40 Advertisements with feature films	11
Omit “or R 18+” wherever occurring from section 40 (3).	12
Insert instead “, R 18+ or X 18+”.	13
[20] Section 40 (3) (d)	14
Insert “or X 18+” after “R 18+”.	15
[21] Section 40 (3) (e)	16
Insert after section 40 (3) (d):	17
(e) R 18+ is a lower classification than X 18+.	18
[22] Section 63 Certain proceedings precluded	19
Omit “or X 18+” from section 63 (b).	20