

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

[2001-95]



New South Wales

Status Information

Currency of version

Historical version for 1 July 2005 to 31 December 2012 (accessed 28 November 2024 at 16:19)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
Classification (Publications, Films and Computer Games) Enforcement Amendment (R 18+ Computer Games) Act 2012 No 65 (not commenced — to commence on 1.1.2013)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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



New South Wales

An Act to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* to make further provision with respect to the enforcement of a classification scheme for publications, films and computer games; to create certain offences relating to on-line services; and for other purposes.

1 Name of Act

This Act is the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

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

The *Classification (Publications, Films and Computer Games) Enforcement Act 1995* is amended as set out in Schedules 1 and 2.

4 (Repealed)

Schedule 1 (Repealed)

Schedule 2 Amendments relating to on-line services

(Section 3)

Part 5A

Insert after section 45:

Part 5A On-line services

45A Definitions

In this Part:

access has the same meaning as it has in Schedule 5 to the *Broadcasting Services Act 1992* of the Commonwealth.

Internet content has the same meaning as it has in Schedule 5 to the *Broadcasting Services Act 1992* of the Commonwealth.

Note—

Internet content is defined so as to mean information that is kept on any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device and that is accessed, or available for access, using an Internet carriage service (as defined in that Act) but so as not to include ordinary electronic mail or information that is transmitted in the form of a broadcasting service.

matter unsuitable for minors means Internet content consisting of a film that is classified R, or that would, if classified, be classified R, or an advertisement for any such film consisting of or containing an extract or sample from the film comprising moving images.

Note—

The *National Classification Code* set out in the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth (“the Code”) provides for films and computer games to be classified RC that:

- (a) depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified, or
- (b) depict in a way that is likely to cause offence to a reasonable adult, a person who is, or who appears to be, a child under 16 (whether the person is engaged in sexual activity or not), or
- (c) promote, incite or instruct in matters of crime or violence. Computer games that are unsuitable for a minor to see or play may also be classified RC.

objectionable matter means Internet content consisting of:

- (a) a film that is classified X, or that would, if classified, be classified X, or
- (b) a film or computer game that is classified RC, or that would, if classified, be classified RC, or
- (c) an advertisement for a film or computer game referred to in paragraph (a) or (b), or
- (d) an advertisement that has been, or would be, refused approval under section 29 (4) of the Commonwealth Act.

on-line service means an Internet carriage service within the meaning of Schedule 5 to the *Broadcasting Services Act 1992* of the Commonwealth and includes a bulletin board.

45B Application of Part

- (1) This Part applies to an on-line service other than an on-line service, or on-line service of a class, prescribed by the regulations.
- (2) Nothing in this Part makes it an offence to supply objectionable matter or matter unsuitable for minors by means of an on-line service to any person, or class of persons, prescribed by the regulations.
- (3) A person is not guilty of an offence under this Part by reason only of the person:
 - (a) owning, or having the control and management of the operation of, an on-line service, or
 - (b) facilitating access to or from an on-line service by means of transmission, downloading, intermediate storage, access software or similar capabilities.

45C Making available or supplying objectionable matter on on-line service

A person must not, by means of an on-line service, make available, or supply, to another person, objectionable matter:

- (a) knowing that it is objectionable matter, or
- (b) being reckless as to whether it is objectionable matter.

Maximum penalty: 100 penalty units for an individual, 250 penalty units for a corporation.

45D Making available or supplying matter unsuitable for minors on on-line service

- (1) A person must not, by means of an on-line service, make available, or supply, to another person, any matter unsuitable for minors:
 - (a) knowing that it is matter unsuitable for minors, or
 - (b) being reckless as to whether it is matter unsuitable for minors.

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

- (2) It is a defence to a prosecution under this section for the defendant to prove that access to the matter unsuitable for minors was subject to an approved restricted access system at the time the matter was made available or supplied

by the defendant.

(3) In this section:

approved restricted access system means:

- (a) any restricted access system within the meaning of the *Broadcasting Services Act 1992* of the Commonwealth, or
- (b) any other system of limiting access declared by the Minister, by order published in the Gazette, to be an approved restricted access system for the purposes of this definition.

45E Recklessness

- (1) A person is reckless as to whether matter is objectionable matter or matter unsuitable for minors:
 - (a) if the person is aware of a substantial risk that the matter is objectionable matter or matter unsuitable for minors, and
 - (b) that having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2) The question of whether taking a risk is unjustifiable is one of fact.