



New South Wales

Classification (Publications, Films and Computer Games) Enforcement Amendment (R 18+ Computer Games) Bill 2012

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* to give effect to a decision by all Australian jurisdictions to introduce an R 18+ classification for computer games. Procedures for the classification of computer games are set out in the relevant Commonwealth Act, which is being amended to include an R 18+ category, and procedures for the enforcement of those classifications are set out in State and Territory laws. This Bill amends the New South Wales Act as follows:

- (a) by prohibiting the sale or delivery of computer games classified R 18+ to a minor (that is, to a person who is under 18 years), except by a parent or guardian of the minor,
- (b) by prohibiting the public demonstration of computer games classified R 18+ if a minor is present during any part of the demonstration,
- (c) by prohibiting the private demonstration of computer games classified R 18+ in the presence of a minor, except by a parent or guardian of the minor,

- (d) by requiring computer games classified R 18+ to display determined markings and consumer advice, indicating the classification of the games and what that classification means,
- (e) by ensuring that public libraries, which are otherwise exempt from offences for restricted material held by them, do not demonstrate or lend computer games classified R 18+ to minors.

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 1 January 2013 (the date of commencement of the Commonwealth Act that creates the R 18+ classification (that is, the *Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Act 2012* of the Commonwealth)) or on the date of assent to the proposed Act, whichever is the later.

Clause 3 repeals an amending Act that contains uncommenced amendments. The substance of those amendments (to change categories of films from “R” to “R 18+” and from “X” to “X 18+”) is incorporated in the amendments made to the relevant provisions by Schedule 2 to the proposed Act.

Schedule 1 Amendment of Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63

Schedule 1 [1] and [9] make amendments of a statute law revision nature to ensure that certain provisions relating to the consequences of the reclassification of films and computer games apply to any reclassification under the Commonwealth Act (not just reclassifications under specified sections).

The remaining provisions of **Schedule 1** make amendments consequential on the enactment of the Commonwealth Act that creates the R 18+ classification for computer games. The amendments made by Schedule 1 align the new R 18+ computer game restrictions with the existing restrictions on R 18+ films.

Schedule 1 [2] specifies the penalty for selling or publicly demonstrating an unclassified computer game that is subsequently classified R 18+.

Schedule 1 [3] makes it an offence to sell or deliver a computer game classified R 18+ to a minor unless the person who sells or delivers the game is a parent or guardian of the minor. It will also be an offence to sell or deliver an unclassified computer game that would, if classified, be classified R 18+, unless the person selling or delivering the game is a parent or guardian of the minor. It is a defence to a prosecution for either such offence to prove that:

- (a) the minor, before being sold or delivered the computer game, produced to the defendant, or to the defendant’s employee or agent, documentary evidence

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that might reasonably be accepted as applying to the minor and as showing that the minor was an adult, or

- (b) the defendant, or the defendant's employee or agent, believed on reasonable grounds that the minor was an adult, or
- (c) the minor was employed by the defendant and the delivery took place in the course of that employment.

Schedule 1 [4] makes it an offence for a parent or guardian of a minor to permit the minor to attend the demonstration in a public place of a computer game classified RC or R 18+ or an unclassified computer game that would, if classified, be classified RC or R 18+.

Schedule 1 [5] makes it an offence for a minor who is 15 or older to buy a computer game classified R 18+, or to attend the demonstration of a computer game classified R 18+ in a public place, knowing that the computer game is so classified.

Schedule 1 [6] makes it an offence to publicly demonstrate a computer game classified R 18+ if a minor is present during any part of the demonstration. (*Demonstrate* a computer game is defined to include exhibit, display, screen, or make available for playing, the computer game.) It is a defence to a prosecution for such an offence to prove that:

- (a) the minor produced to the defendant, or to the defendant's employee or agent, documentary evidence that might reasonably be accepted as applying to the minor and as showing that the minor was an adult, or
- (b) the defendant, or the defendant's employee or agent, believed on reasonable grounds that the minor was an adult, or
- (c) the minor was employed by the defendant and the demonstration took place in the course of that employment.

Schedule 1 [7] makes it an offence for a person to privately demonstrate in the presence of a minor a computer game classified R 18+, or an unclassified computer game that would, if classified, be classified R 18+, unless the person is a parent or guardian of the minor. It is a defence to a prosecution for such an offence that the defendant believed on reasonable grounds that the minor was an adult.

Schedule 1 [8] makes it an offence for a person to publicly demonstrate a computer game classified R 18+ unless the determined markings are exhibited before the computer game is demonstrated. (*Determined markings* are those determined under the Commonwealth legislation. They indicate the classification of the computer game and the restrictions that it creates.)

Schedule 1 [10] omits a note that will be redundant as a result of the enactment of the proposed Act, and the fact that computer games may be classified R 18+. It will be an offence to advertise an R 18+ computer game at the time of a public demonstration or exhibition of a computer game or film that carries a classification lower than R 18+.

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Schedule 1 [11] extends an existing provision that provides exemptions for public libraries, by providing that a public library, or any person employed in a public library, does not commit an offence in respect of restricted material (including a computer game classified R 18+) that is held in the library if certain requirements are complied with, in particular that the display or perusal of computer games classified R 18+, and access to such computer games by members of the public, must be restricted in an appropriate manner, that computer games classified R 18+ must not be demonstrated in the library in the presence of members of the public and that minors must not be permitted to borrow computer games classified R 18+.

Schedule 1 [12] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and any other Act that amends the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*.

Schedule 2 Amendment of Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001 No 95

Schedule 2 amends uncommenced amendments that create offences relating to the use of on-line services to make available or supply objectionable matter or matter that is unsuitable for minors.

Schedule 2 [1] extends the definition of *matter unsuitable for minors* to include computer games that are classified R 18+ or that would, if classified, be classified R 18+.

Schedule 2 [2] updates a category of film from “X” to “X 18+”.