

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (the **Principal Act**) for the following purposes:

- (a) to provide for the mutual recognition in New South Wales of notices that call in publications for classification under a law of another State or a Territory,
- (b) to provide that advertisements for computer games and films contained within another computer game or film must be of the same or a lower classification as the principal game or film,
- (c) to enable all certificates issued by the Director and Deputy Director of the Classification Board and the Convenor of the Review Board under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth to be admissible and prima facie evidence in proceedings for offences under the Principal Act or the *Crimes Act 1900*,
- (d) to provide that the prosecution and the accused in criminal proceedings under the Principal Act may agree to the classification of relevant publications, films and computer games.

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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 the date of assent to the proposed Act.

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

Schedule 1 [1] provides for the mutual recognition of notices that call in publications for classification. Specifically, the amendment substitutes the definition of **submittable publication** in section 4 (1) of the Principal Act to include publications called in for classification by the Director of the Classification Board under a provision of an Act of another State or a Territory that corresponds to section 46 of the Principal Act. The effect of this amendment is that a publication called in (whether in NSW or elsewhere in Australia) becomes a submittable publication and therefore is subject to the prohibitions and controls of the Principal Act (eg section 19 of the Principal Act prohibits the sale of submittable publications).

Schedule 1 [2]–[5] make amendments to provide that advertisements for computer games and films contained within another computer game or film must be of the same or a lower classification as the principal game or film. The Principal Act already provides that an advertisement for a computer game contained within another computer game, and an advertisement for a film contained within another film, must be of the same or a lower classification as the principal game or film (as relevant). The amendments are made necessary by the emerging practice of advertising computer games within films and vice versa.

Schedule 1 [6] makes an amendment to provide that all certificates issued by the Director and Deputy Director of the Classification Board and the Convenor of the Review Board under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth (rather than only certificates under section 87 of that Act) are, in proceedings for offences under the Principal Act or the *Crimes Act 1900*, admissible and prima facie evidence of the matters stated in those certificates. The amendment will enable other certificates (such as classification certificates under section 25 of the Commonwealth Act) to be used in such proceedings.

Schedule 1 [7] inserts proposed section 58A into the Principal Act to provide for a scheme under which the prosecution and the accused in criminal proceedings under the Principal Act may agree to the classification of relevant publications, films and computer games. Under the scheme the prosecution may, prior to trial, give the accused a notice to agree to the relevant classification of the publications, films or computer games concerned. If the accused agrees and signs the notice, the notice becomes evidence of, and in the absence of evidence to the contrary is proof of, the matter agreed. If a person served with a notice does not agree but is subsequently found guilty of the offence specified in the notice, the prosecution is entitled, on Explanatory note page 3

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application to the court making the finding of guilt, to recover from the person an amount equal to the fee for classification of the relevant publications, films or computer games or the fee for obtaining a certificate under section 58 of the Principal Act.

The proposed section is based on section 141A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* of Western Australia.

Schedule 1 [8] makes an amendment consequential on the enactment of proposed section 58A.

Schedule 1 [9] enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.