



New South Wales

Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010

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.

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

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.

First print



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No. , 2010

A Bill for

An Act to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* to make further provision for the enforcement of the classification scheme for publications, films and computer games; 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 2010</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Classification	1
	(Publications, Films and Computer	2
	Games) Enforcement Act 1995 No 63	3
[1] Section 4 Definitions		4
	Omit the definition of <i>submittable publication</i> from section 4 (1).	5
	Insert instead:	6
	<i>submittable publication</i> has the same meaning as in the	7
	Commonwealth Act, and includes a publication called in by the	8
	Director under:	9
	(a) section 46 of this Act, or	10
	(b) a provision of an Act of another State or a Territory that	11
	corresponds to that section.	12
[2] Section 40 Advertisements with feature films		13
	Omit section 40 (1) and (2). Insert instead:	14
	(1) A person must not, during a program for the exhibition of a	15
	classified film (<i>the feature film</i>), publicly exhibit an	16
	advertisement for another film or a computer game unless the	17
	advertised film or advertised computer game has the same	18
	classification as (or has a lower classification than) the feature	19
	film.	20
	Maximum penalty: 50 penalty units for an individual,	21
	100 penalty units for a corporation.	22
	(2) A person must not sell a film that contains a classified film	23
	(<i>the feature film</i>) and an advertisement for another film or a	24
	computer game unless the advertised film or advertised computer	25
	game has the same classification as (or has a lower classification	26
	than) the feature film.	27
	Maximum penalty: 50 penalty units for an individual,	28
	100 penalty units for a corporation.	29
[3] Section 40 (3)		30
	Omit “film”.	31
[4] Section 41 Advertisements with computer games		32
	Omit section 41 (1). Insert instead:	33
	(1) A person must not sell, or publicly demonstrate, a computer game	34
	that contains a classified computer game (<i>the main computer</i>	35
	<i>game</i>) and an advertisement for another computer game or a film	36

Classification (Publications, Films and Computer Games) Enforcement
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Schedule 1 Amendment of Classification (Publications, Films and Computer Games)
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unless the advertised game or advertised film has the same
classification as (or has a lower classification than) the main
computer game. 1
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Maximum penalty: 50 penalty units for an individual,
100 penalty units for a corporation. 4
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[5] Section 41 (2) 6

Omit the subsection. Insert instead: 7

(2) The hierarchy of classification is as follows: 8

(a) G is a lower classification than PG, M, MA 15+ or R 18+, 9

(b) PG is a lower classification than M, MA 15+ or R 18+, 10

(c) M is a lower classification than MA 15+ or R 18+, 11

(d) MA 15+ is a lower classification than R 18+. 12

Note. The highest classification for computer games under the National
Classification Code is MA 15+. The highest classification for films under
that Code is R 18+. 13
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[6] Section 58 Evidence 16

Omit “section 87 of” from section 58 (1). 17

[7] Section 58A 18

Insert after section 58: 19

58A Proof of classification by agreement 20

(1) Subject to subsection (2), if a person is charged with an offence
under this Act, the prosecution may, prior to the trial, give the
accused a notice: 21
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(a) setting out: 24

(i) the title or apparent title (if any) of the publication,
film or computer game, and 25
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(ii) particulars of the offence in relation to which the
notice is served, and 27
28

(b) stating that the accused is entitled to view the publication,
film or computer game, and 29
30

(c) inviting the accused to indicate, by completing and signing
a statement to that effect set out in the notice and returning
the notice to an address set out in the notice, that the
accused agrees that, on a specified date, the publication,
film or computer game: 31
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33
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35

(i) was classified at the specified classification, or 36

- (ii) was unclassified but would, if classified, have been of the specified classification, 1
as the case may require, and 2
3
- (d) stating that if the accused does not indicate his or her agreement in accordance with paragraph (c) within the period specified in the notice (being not less than the prescribed period), the accused will, if found guilty of the offence specified in the notice, be liable to pay an amount equal to: 4
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- (i) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a publication, film or computer game was unclassified but would, if classified, have been of a particular classification—the fee for classification of the publication, film or computer game, or 10
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- (ii) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a publication, film or computer game was classified at a particular classification—the fee for obtaining a certificate of a kind described in section 58 specifying the classification of the publication, film or computer game at that date. 16
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- (2) This section does not apply where the offence with which a person is charged involves an allegation that a publication, film or computer game was unclassified but would, if classified, be classified at a classification other than X 18+ or RC. 23
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- (3) A person served with a notice under this section must, on making a written request to the prosecution within 14 days from the date of service of the notice, be allowed to view the publication, film or computer game the subject of the notice at a time and place fixed by the prosecution. 27
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- (4) In proceedings for an offence under this Act, a notice under this section containing a statement, completed and signed by the accused, that the accused agrees that, on a specified date, the publication, film or computer game: 32
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- (a) was classified at the specified classification, or 36
- (b) was unclassified but would, if classified, have been of a specified classification, 37
38
- is evidence of, and in the absence of evidence to the contrary is proof of, the matter agreed. 39
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- (5) If: 1
- (a) a person served with a notice under this section does not 2
deliver the notice, duly completed and signed, to the 3
address specified in the notice within the period specified 4
in the notice, and 5
- (b) the person is found guilty of the offence specified in the 6
notice, 7
- the prosecution is entitled, on application to the court making the 8
finding of guilt, to recover from the person an amount equal to the 9
fee described in the notice. 10
- (6) In proceedings in which an application referred to in 11
subsection (5) is made, a certificate signed or purporting to be 12
signed by the Commissioner of Police and stating that: 13
- (a) a person was served with a notice set out in the certificate 14
and did not return the notice, duly completed and signed, 15
to the address specified in the notice within the period 16
specified in the notice, and 17
- (b) a specified amount was paid as the fee described in the 18
notice, 19
- is evidence of, and in the absence of evidence to the contrary is 20
proof of, the facts stated in the certificate. 21
- (7) If: 22
- (a) a notice is served under this section in relation to an 23
offence involving an allegation that a publication, film or 24
computer game was unclassified but would, if classified, 25
have been of a specified classification, and 26
- (b) the person served with the notice does not return the 27
notice, duly completed and signed, to the address specified 28
in the notice within the period specified in the notice, and 29
- (c) the publication, film or computer game is subsequently 30
classified at a higher classification than the classification 31
specified in the notice, 32
- this section applies as if the notice had specified that higher 33
classification. 34
- (8) In this section, *prescribed period* means 14 days from the date of 35
service of the notice or, if the person served with the notice 36
requests that he or she be allowed to view the publication, film or 37
computer game the subject of the notice, 14 days from the time 38
fixed by the prosecution for the viewing. 39

[8] Section 59 Commencement of proceedings	1
Omit section 59 (1). Insert instead:	2
(1) Proceedings for an offence under this Act in relation to a film, publication or computer game that is unclassified at the time of the alleged offence:	3 4 5
(a) are not to be commenced until:	6
(i) the film, publication or computer game has been classified, or	7 8
(ii) the accused, by notice under section 58A, agrees that the publication, film or computer game if classified would have been the classification agreed, and	9 10 11 12
(b) are not to be commenced later than 12 months after the date on which:	13 14
(i) the film, publication or computer game was classified, or	15 16
(ii) the accused returned the notice under section 58A, whichever is relevant.	17 18
[9] Schedule 1 Savings and transitional provisions	19
Insert at the end of clause 1 (1):	20
<i>Classification (Publications, Films and Computer Games)</i> <i>Enforcement Amendment Act 2010</i>	21 22