

## Second Reading

**The Hon. MICHAEL VEITCH** (Parliamentary Secretary) [8.00 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

### Leave granted.

The purpose of this bill is to amend the Classification (Publications, Films and Computer Games) Enforcement Act 1995 to achieve three key outcomes:

- 1) It will increase the capacity of the NSW Police Force to enforce classification laws by helping to reduce the cost of classification prosecutions;
- 2) It will foster a more national approach to the recall of publications being sold in breach of classification laws; and
- 3) It will modernise advertising provisions in the Act to ensure that people, especially minors, are not exposed to advertising content in films and computer games that is higher in impact than the content of the film or computer game that they have chosen to view or play.

### Increasing enforcement capacity

Under the national classification scheme, the Commonwealth is responsible for classifying films, publications, computer games and certain other material while the States and Territories are responsible for enforcing these classification decisions.

These arrangements are embodied in an intergovernmental agreement (IGA), which also provides that State and Territory enforcement agencies are entitled to 100 free applications for classification and evidentiary certificates for use in classification prosecutions.

Once this quota is exhausted, the IGA provides that State and Territory enforcement agencies must pay the fees prescribed in Commonwealth classification regulations for classification certificates, and half of the prescribed fee for evidentiary certificates, to the Classification Board.

The NSW Police Force consistently exhausts its annual quota of free applications. It made 161 applications to the Classification Board in 2008-09 and has been similarly active in previous years.

Enforcement action can become very expensive once the quota has been exhausted. For example, the fee for having the Board classify a 120 minute DVD film is \$700.

This bill will help to alleviate this cost pressure by removing unnecessary evidentiary requirements, which currently require a classification certificate and a separate evidentiary certificate in classification prosecutions.

Evidentiary certificates serve a range of purposes, including verifying a previous classification decision, and can cost up to \$1,410. The police must pay half of this cost to obtain the certificate. So in a prosecution relating to material that has not been classified, the cost to the police can be up to \$1,405 for a 120 minute DVD film, comprising \$700 for the classification certificate and \$705 for the evidentiary certificate.

A separate evidentiary certificate will no longer be necessary in a prosecution for unclassified material as the bill provides that the classification certificate is evidence of classification in the prosecution. By removing this unnecessary cost and red tape, police will have a greater capacity to enforce classification laws.

This bill will also introduce new provisions authorising the prosecution and the accused in criminal proceedings under the Act to agree to the classification of relevant publications, films and computer games. These provisions will only apply to more explicit material, that is, material that would likely be classified X18+ or RC by the Classification Board.

Under the scheme the prosecution may, prior to trial, give the accused a notice to agree to the relevant classification of the publication, film or computer game concerned. For example, the police may put it to the accused that an unclassified film would be classified X18+ if it were submitted to the Classification Board.

The accused must be given an opportunity to view the material to enable it to make an informed decision. 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, removing the need to obtain costly classification or evidentiary certificates for the prosecution.

If a person served with a notice does not agree, or does not respond to the notice, but is subsequently found guilty of the offence specified in the notice, the prosecution is entitled to apply to the court to recover the appropriate classification fees from the person. This will encourage defendants to participate in this process in good faith.

This will reduce pressure on the annual quota of free applications, and reduce enforcement costs where the quota is

already exhausted. It will also expedite prosecution proceedings allowing the police force to make more efficient use of its resources.

If the defendant is found not guilty of the offence in question (eg. because the material is found to have a classification other than RC or X18+) then he or she will not be liable to pay the costs of classification set out in the notice.

Together, the new classification by agreement provisions and the removal of unnecessary evidentiary requirements are intended to increase the capacity of the police to enforce classification laws, reinforcing the integrity of the national classification scheme.

#### **Mutual recognition of "call-in" notices**

The bill also makes important changes to the existing "call-in" provisions, which empower the Director of the Classification Board to call-in publications being sold and exhibited in breach of classification laws. Once a call-in notice is issued in NSW, the publication must be submitted to the Classification Board for classification and cannot be legally sold or publicly exhibited in NSW until it has been classified.

The changes will provide that these notices will be recognised no matter where they have been issued in Australia, so that when a publication is called-in under the classification legislation of another State or Territory, it will also be called-in automatically in NSW. NSW is the first jurisdiction to introduce mutual recognition for these notices and encourages other jurisdictions to follow suit to ensure a truly national approach to them.

#### **Cross advertising of films and computer games**

Finally, the bill makes important changes to modernise the advertising provisions in the Act. Currently, the Act provides that a person must not publicly exhibit an advertisement for a classified film during a program for the exhibition of another classified film unless the advertised film has the same classification as, or has a lower classification than, the classified film. Similar restrictions apply in relation to the sale of films (on DVDs for example). This also applies to classified computer games containing advertisements for other classified computer games.

The main objective of the rule is to protect audiences from being exposed to advertisements for material classified, or assessed as likely to be classified, at a higher level than the film they have chosen to view (or computer games they have chosen to play), and in particular, that higher level content is not advertised to children.

However, computer games are now commonly being advertised during film screenings and vice versa. The bill will amend the Act to ensure that films and computer games that are advertised carry a classification equal to or lower than the film or computer game with which they are advertised.

#### **Conclusion**

The bill makes a range of amendments to improve the operation of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*.

I commend the bill to the House.