

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Minister for Industrial Relations)
[5.33 p.m.]: I move:

That this bill be now read a second time.

The purpose of this bill is to amend the Classification (Publications, Films and Computer Games) Enforcement Act 1995, to ensure that future requirements imposed on the advertising of unclassified films and unclassified computer games will be enforceable in New South Wales. These are technical amendments that are necessary to complement amendments to the Commonwealth classification legislation. Before I address the provisions of the bill, it is appropriate for me to provide some background regarding the National Classification Scheme, and the recent Commonwealth amendments. The scheme for the classification of films, publications and computer games in New South Wales is part of a national, cooperative scheme, which commenced operation in 1996 with the support of all Australian jurisdictions. The Commonwealth Classification (Publications, Films and Computer Games) Act 1995 establishes the classification authorities—the Classification Board and the Review Board—and provides the framework for the administration and making of classification decisions.

All Australian States and Territories have enacted legislation that sets out offence provisions to enforce the classifications of products under the Commonwealth Act, and to place appropriate restrictions on the sale, exhibition and advertising of films, publications and computer games. The New South Wales legislation is the Classification (Publications, Films and Computer Games) Enforcement Act 1995. New South Wales Police are responsible for enforcing this legislation. I move now to the recent amendments to Commonwealth classification legislation.

Currently, Australian State and Territory enforcement legislation makes it an offence to advertise an unclassified film or computer game. However, some limited exceptions do exist for cinema release films. Due to increasing concerns about piracy, and rapid advances in technology, films and computer games are now often available for classification only very close to their release date. As such, the current classification laws place significant regulatory limitations on marketing these films and computer games prior to their classification. To address this concern, while ensuring that advertising continues to be done appropriately, Commonwealth, State and Territory classification Ministers agreed in April 2007 to implement a new way of regulating the advertisement of films and computer games which have yet to be classified. This new advertising scheme was developed following nationwide public consultation in late 2006.

The first step in implementing this new advertising scheme was the recent amendments to the Commonwealth legislation, made by the Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008. When the Commonwealth Act comes into force on or before 1 July 2009, it will allow the Commonwealth Minister for Home Affairs to make a statutory instrument that sets conditions for the advertising of films and computer games before they are classified. The Commonwealth and all State and Territory classification Ministers have already agreed on the conditions which will be imposed by this statutory instrument, with the final text of the Commonwealth instrument to be developed in consultation with States and Territories. This consultation is guaranteed by section 31 of the Commonwealth Act, as amended.

The conditions contained in the new scheme will relate to the display of a message to check the classification, similar to that which currently appears on some cinema-release films, and strict time periods in which industry must add classification information to advertisements once the product is classified. The scheme will also place strong limitations on advertising where advertisements for unclassified material accompany a classified product. Currently in New South Wales, it is an offence to advertise a film that has been classified PG or M during a screening of a G-rated film. The new advertising scheme will introduce this strict commensurate audience rule for the advertising of unclassified products. It will be prohibited to advertise a film likely to be classified PG with a film which has already been classified G.

In order to apply this rule, the Commonwealth instrument will establish an assessment scheme for unclassified films and computer games, whereby the likely classification of the product can be determined either by the Classification Board, or by an assessor who has undertaken training approved by the director of the Classification Board and is authorised by the director to make such assessments. This assessment will ensure that where unclassified material is advertised together with classified material—for example, a trailer at the start of a film or DVD—the advertisements for unclassified material are always appropriately matched to the audience of the classified material. Mandatory initial training will be provided for individual assessors in courses approved by the Classification Board, including mandatory annual refresher training. Also, there will be disciplinary provisions for assessors. The director of the Classification Board will have the power to revoke or suspend a person's authorisation to assess materials, if, for example, that person seriously or repeatedly misrepresents the likely classification of materials.

The bill provides a number of safeguards to ensure the integrity of the new advertising scheme. First and foremost, the scheme will not apply to material that falls into, or is likely to fall into, the X18+ or RC categories. Advertising of this material is currently prohibited, and will continue to be prohibited. Other safeguards include the following: Currently, under the Commonwealth legislation, the board must refuse to approve offensive advertisements or advertisements which deal with topics in a way that offend reasonable standards of morality and decency. This provision will be retained under the new advertising scheme, and it will remain an offence to publish, screen or otherwise distribute an advertisement that has been refused approval by the Classification Board, or, importantly, which would be refused approval by the Classification Board if it were submitted for approval.

The director of the Classification Board currently has the power to call in an advertisement for classification. If the director does so, the advertisement has to be submitted to the Classification Board within three business days. The board then determines whether the advertisement should be approved for distribution. This power will also be retained for advertisements for unclassified material. Similarly, the director of the Classification Board will have the power to bar a distributor from using authorised assessors for unclassified material. In those circumstances, the distributor will be required to apply to the Classification Board for assessment of the likely classification of any unclassified films or computer games they wish to advertise. Those offences and powers will deter assessors, distributors and advertisers from making lax or inadequate assessments.

Having outlined the new advertising scheme and its various safeguards, I move now to the contents of the New South Wales bill. As I noted earlier, the purpose of this bill is to make the technical amendments necessary to complement the new advertising scheme when it comes into force. This bill amends the NSW Classification (Publications, Films and Computer Games) Enforcement Act 1995, to ensure that the scheme's requirements on the advertising of unclassified films and computer games will be enforceable in New South Wales.

The bill makes amendments to remove the offence of advertising an unclassified film or computer game and replaces this with an offence of advertising an unclassified film or computer game otherwise than in accordance with the new advertising scheme. The bill also inserts new offences of advertising an unclassified film or an unclassified computer game together with classified material if the advertisement does not comply with the advertising scheme. I note that to ensure the amendments in this bill come into force only when the text of the Commonwealth instrument is agreed to by New South Wales, the amendments made by this bill are to commence by proclamation. Tasmania and the Northern Territory have already introduced bills to make similar amendments to their classification enforcement legislation, and such amendments will need to be made to classification legislation in all other States and Territories prior to 1 July 2009. By allowing the new advertising requirements to be enforced in New South Wales, these amendments will ensure the continued efficacy of the National Classification Scheme. I commend the bill to the House