

NSW Legislative Council Hansard

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) ENFORCEMENT AMENDMENT (UNIFORM CLASSIFICATION) BILL

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Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [3.47 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

Since 1996 Australia has had a national classification scheme for films, computer games and publications. Under this scheme the Commonwealth classifies films, computer games and publications and the enforcement of classification decisions is the responsibility of the States and Territories. Accordingly, when agreement is reached to amend the scheme, complementary amendments are often required to be made by the Commonwealth, and all States and Territories, to their classification legislation. This Bill is the result of such an agreement between the Commonwealth, States and Territories.

Under the national classification scheme, the guidelines for the classification of films, publications and computer games are periodically reviewed. This is to ensure that the guidelines continue to reflect current community attitudes and standards.

In 2000, Censorship Ministers agreed to a combined review of the Guidelines for the Classification of Films and Videotapes and the Guidelines for the Classification of Computer Games. A combined review was thought necessary to deal with issues then arising from the convergence of media in digital recordings.

Following the launch of the review of the Guidelines for Films and Computer Games, a discussion paper was prepared by the Office of Film and Literature Classification, public submissions were called, and stakeholders were given the opportunity to comment. In early 2002 an independent expert, Dr Jeffrey Brand, from the Centre for New Media Research and Education at Bond University, was appointed to analyse the submissions.

Dr Brand's report emphasised that the difficulties of classification in a dynamic media environment needed to be addressed by the national classification scheme. The issue of convergence pointed very strongly to the conclusion that the guidelines for the varying media forms needed to be combined.

Consistent with the recommendations of Dr Brand's report, Censorship Ministers agreed to redraft the guidelines used to classify films and computer games. The new guidelines contained merged classification guidelines for films and computer games, although the terms used to describe each classification category were still different for films and computer games. These new guidelines came into effect in March 2003.

To support the new guidelines, it was recognised that legislative change was required to enable a consistent set of classification symbols and descriptors for films and computer games.

In March this year State, Territory and Commonwealth Censorship Ministers agreed to amendments to the classification descriptors in the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* (the Commonwealth Act) and to consequential amendments to State and Territory classification enforcement legislation.

In May this year, the Commonwealth passed the *Classification (Publications, Films and Computer Games) Amendment Act 2004*. The Commonwealth amendments make the descriptors for film and computer game classifications in the Commonwealth Act consistent. This complements the Guidelines for the Classification of Films and Computer Games previously agreed to by Censorship Ministers.

This Bill, which is to commence at the same time as corresponding Commonwealth, State and Territory legislation, amends the *Classification (Publications, Films and Computer Games) Enforcement Act* to implement uniform classification categories for films and computer games in NSW. These amendments are consequent on the Commonwealth amendments passed in May.

The Bill makes amendments to various sections of the *Classification (Publications, Films and Computer Games) Enforcement Act* by removing references to old classifications and replacing them with the appropriate new classifications. Accordingly, references to computer game classifications of G (8+), M (15+) and MA (15+) are replaced by PG, M and MA

15+ respectively. Similarly, references to film classifications of MA, R and X are replaced by MA 15+, R 18+ and X 18+ respectively.

The proposed amendments will achieve a number of objectives:
 they will enhance community awareness of the computer games classification scheme through the use of the well-known and understood classification types for films;
 they will enhance the distinction between the advisory and legally restricted classifications (through the inclusion of age descriptors on the restricted classifications only); and
 they will address the confusion regarding the difference between the current M and MA classifications.

Research by the Office of Film and Literature Classification (OFLC) indicates that less than half of the population is aware of the computer games classification scheme. Renaming the computer games classifications to mirror the well-known film classifications will assist parents in choosing games for their children.

Consumers are also very confused about the MA classification. The OFLC conducted in-depth consumer research examining the extent to which consumers are able to differentiate between the M and MA ratings for films. This research concluded that the MA classification category is largely invisible to consumers, being seen as the same as the M classification category.

More specifically, while there is a high degree of public recognition and understanding of the film classification scheme, very few people correctly understand the MA classification. A large percentage think MA means the same as M.

This research strongly pointed to the value in changing the name and label for the MA classification category to clearly distinguish it from the M classification category.

The use of age descriptors for those classifications where there exists a legal restriction on who may watch a film in the cinema, or who may hire or buy a film or computer game for example, will help to distinguish the various classification types.

So, for example, the film classifications of MA and R are to be replaced by MA 15+ and R 18+. The use of '15+' and '18+' indicates legally enforceable age restrictions apply. MA 15+ rated films and computer games will therefore be more clearly differentiated from M rated films and computer games.

Transitional provisions will also apply to ensure that films and computer games that have been previously classified will be covered under the new regime.

It is important to note that the change to the names of the classification types does not affect the type of material that is permitted within each classification. The type of material that is permitted within each classification is assessed by the Classification Board and the Classification Review Board using the criteria set out in the National Classification Code ('the Code') and the Guidelines.

The bill responds to community demands for a simple, commonsense system that is the same across all classified products. Many parents are too busy to learn different classification systems, so a universal classification scheme is in everyone's interests.

I commend the bill to the House.

The Hon. GREG PEARCE [3.47 p.m.]: The Opposition does not oppose the Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill. In a sense, it is more or less a technical bill designed to ensure that new classifications under the Commonwealth Act that relate to these matters, which were agreed by the various State and Territory governments, should be incorporated in legislation. The Commonwealth Classification Amendment Act 2004, which was passed in May 2004, provides for the replacement of existing classifications for films and computer games with new classifications, and the amendments in this bill are consequential on the new classifications under the Commonwealth Act. In March, State, Territory and Commonwealth censorship Ministers agreed to amendments to the classification descriptions in the Commonwealth Act and to consequential amendments to State and Territory enforcement legislation.

The bill, which is to commence at the same time as corresponding Commonwealth, State and Territory legislation—and depending on the various States and Territories passing their legislation—will implement uniform classification categories for films and computer games in New South Wales. The changes relate to the names of classifications only and do not affect the type of material that is permitted within each classification. This is not a wholesale review of the classification system and it does not involve any review of the material that is being dealt with under this system. The type of material permitted within each classification is assessed by the Classification Review Board using the criteria set out in the national classification code and guidelines.

The previous classifications for computer games did not include an R classification or an X classification. The new classifications for films and computer games range through the various categories from G, PG, M, which replaces the previous M for films and M (15+) for computer games, MA 15+, which replaces what was MA for films but MA (15+) for computer games; and R 18+ and X 18+ for films only. As I mentioned earlier, the amendments in the bill are consequential on the new classifications under the Commonwealth Act and have been agreed by the various State, Territory and Commonwealth Ministers. It is sensible to use the well-known and understood classifications for types of films and to enhance community awareness of the scheme. It is sensible to extend the classifications to computer games to enable people to better understand the various classifications. As I said, the Opposition does not oppose the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.51 p.m.]: The Democrats' general position is that we should have as much freedom in society as is possible without affecting the rights of others. We feel that the attitude to prohibition on viewing consenting sex is an extraordinary feature of our society and is really quite unusual. The fact that so much violence can be seen but so little sex can be seen is nothing short of remarkable. Surely it is a question of whether people are harmed or are consenting, and whether they are enjoying themselves while they are doing what is, after all, a natural function. The Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill will amend the classification description of films and computer games consistent with recent amendments to the Commonwealth Act.

First, the amendments will apply the same classification standards to computer games and films. Second, the bill removes all reference to previous classifications M, MA, R and X, with MA 15+ for both films and computer games, and R 18+ and X 18+ for films only. Inserting the 15+ and 18+ after the rating classification clearly emphasises the already legally enforceable age restrictions that apply to a film. The ratings for M, PG and G will remain merely advisory to help people make informed choices about what they and their families see. My staff spoke to the Office of Film and Literature Classification. It is developing a media campaign to inform people of changes due to come into effect in May next year after legislation is passed by all the States and Territories. However, as far as I am aware this bill will not apply to publications as well.

While I support the bill, it still does not tackle problems surrounding the illegal sale of X-rated films in New South Wales. The sale of films classified X by the Office of Film and Literature Classification is prohibited in New South Wales. The Office of Film and Literature Classification, an organisation under the portfolio of the Commonwealth Attorney-General, classifies film and literature of all jurisdictions in Australia. Under the Commonwealth Act and the powers of the constitution-related provisions of Territory laws, X classification is legal in the Territories. That is why adult film distribution in Australia is based in the Australian Capital Territory. However, the States were given the discretion to accept the X rating. Due to the perception of community values—or, more accurately, successful lobbying by Christian conservatives who dragged the appropriately named Mary Whitehouse over from the United Kingdom in the early 1990s—the States chose not to accept the X classification. That is why X-rated films are illegal in New South Wales.

Section 6 of the Classification (Publications, Films and Computer Games) Enforcement Act prohibits the sale or public exhibition of unclassified RC or X films. A person must not sell or publicly exhibit a film classified RC or X or an unclassified film. Regardless of this, many retailers of restricted or adult literature still sell X-rated films in New South Wales. There are shelf loads of these with all sorts of titles and covers. There are two reasons for this. The maximum penalty for selling X-rated films in New South Wales is comparable to a serious summary offence. Section 6 provides:

... in the case of a film classified as RC or X or an unclassified film that is subsequently classified RC or X—100 penalty points or imprisonment for 12 months for individual, 250 penalty points for a corporation.

According to the Eros Foundation, more than three million adult videos and DVDs are sold in New South Wales, with a turnover of more than \$45 million, a year. The profits made from the sale of X-rated films are substantial. Irregular and purely procedural police enforcement of the law rarely results in a conviction of retailers. In an article by Martin Wallace in the *Sunday Mail* dated 19 September this year the Australian Federation Against Copyright Theft estimated the cost of counterfeit movie and pornographic DVDs to be \$200 million. The Eros Foundation estimates that 80 per cent of adult videos sold in New South Wales are pirated copies and 75 per cent have not being classified.

All State and Territory legislation mirrors the Commonwealth Act, with the addition of enforcement provisions. In practice, the State enforcement Acts are rarely used, which creates an environment where a black market is thriving. It is a worry when this much money is being made from illegal activity that is unpoliced. Some operators have said that they wonder what day someone from organised crime will say, "You will get your distribution from us." They will not be able to complain because they have been performing an illegal act and will now be threatened by bigger operators. Anecdotal evidence suggests that once police have raided an establishment a fine is levied on the retailer and confiscated films are destroyed. As far as I am aware, only one person has been arrested for relevant breaches of the classification Act since 1995.

In a survey conducted by Latrobe University in 2002 entitled *Sex in Australia*, 26.5 per cent of adults stated that they watched X-rated films. According to a Roy Morgan poll in 1999, 76.3 per cent of people believed X-rated, non-violent erotic films should be legally available from licensed adult stores. The irony is that persons over the age of 18 in New South Wales are allowed to vote, pay taxes, buy alcohol, get mortgages and even buy a gun, but apparently they are not mature enough or responsible enough to exercise their choice of entertainment. It is an irony that an adult can place a mail order to a distributor based in the Australian Capital Territory for X-rated videos classified by the Office of Film and Literature Classification and receive them in the mail to watch in the privacy of their own home, yet "restricted premises" as defined in the New South Wales Act, where people under the age of 18 are prohibited, cannot sell X-rated material to consenting adults. Needless to say, that law is simply not enforced.

More than one million X-rated videos are mail ordered to Australians every year. Perhaps the most ludicrous aspect of the status quo is the distinction between publications and film and video. In every State and Territory, category 2 images—that is, X-rated photos and magazines—are illegal, albeit sold from restricted premises. However, the moving picture version of the same image is presently banned throughout the Commonwealth, except in the Australian Capital Territory and the Northern Territory. Frequently, category 2 images are merely still images from X-rated movies. However, I have received correspondence from constituents who have expressed concern about the sale of similar magazines at service stations, convenience stores and markets. Apparently this is becoming more widespread and shows that the current regime simply is not working.

The status quo in New South Wales is irrational and illogical. I am disappointed that the Commonwealth State and Territory censorship Ministers have failed to reach consensus on legalising the X classification system. I am also disappointed with the Premier's lack of leadership on this issue, which I will refer to later. In 2001-02 the Standing Committee on Social Issues conducted an inquiry into the classification enforcement bill. The committee recommended:

That the Attorney General consider either establishing a licensing scheme similar to that which operates in the ACT to allow controlled premises to sell X-rated material in New South Wales or taking more enforcement action against breaches of the legislation.

Films classified as X meet the stringent criteria of what has been deemed to meet community standards and acceptable conduct by members of the classification board. Even the conservative Howard Government has signed off on the guidelines that help determine the classification of films, publications and consumer games. No-one is saying that X-rated films be sold at service stations and newsagencies. However, some people may want to run scare campaigns along those lines. It is happening already, and it is time for the tiger to bare its teeth, regulate this material, remove it from inappropriate places and put it back on the shelves at adult stores out of the sight of people who do not want to see it.

Pursuant to sessional orders business interrupted.

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