

Passed by both Houses



New South Wales

Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2001

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2001

Act No , 2001

*An Act to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* to make further provision with respect to the enforcement of a classification scheme for publications, films and computer games; to create certain offences relating to on-line services; and for other purposes.*

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

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

The *Classification (Publications, Films and Computer Games) Enforcement Act 1995* is amended as set out in Schedules 1 and 2.

4 Amendment of Fines Act 1996 No 99

Schedule 1 to the *Fines Act 1996* is amended by inserting the following in alphabetical order:

Classification (Publications, Films and Computer Games) Enforcement Act 1995, section 61A

Schedule 1 General amendments

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

exempt computer game has the same meaning as in the Commonwealth Act. (*see note at the end of this section*)

exempt film has the same meaning as in the Commonwealth Act. (*see note at the end of this section*)

international flight, in relation to an aircraft, means a flight that passes through the air space over the territory of more than one country and includes any part of the flight that may occur within Australia.

international voyage, in relation to a vessel, means a voyage, whether direct or indirect, between a place in Australia and a place outside Australia and includes any part of the voyage that may occur within Australia.

Review Board means the Classification Review Board established by the Commonwealth Act.

[2] Section 4 (1), definition of “place”

Omit the definition. Insert instead:

place includes any vacant land, premises, vehicle, vessel or aircraft (except a vessel on an international voyage or an aircraft on an international flight).

[3] Section 4 (2)

Insert in alphabetical order in the note to the section:

exempt computer game has the meaning given by section 5B, and includes a film for which a certificate is in force under Division 6 of Part 2.

exempt film has the meaning given by section 5B, and includes a film for which a certificate is in force under Division 6 of Part 2.

[4] Section 4 (2)

Insert at the end of the note to the section:

Section 5B of the Commonwealth Act includes tables specifying films that are exempt films and computer games that are exempt computer games, respectively. They include business, accounting, professional, scientific, educational, current affairs, hobbyist, sporting, family, live performance, musical presentation, religious and community or cultural films and business, accounting, professional, scientific and educational computer games. A film is not an exempt film if it contains material that would be likely to cause it to be classified M or higher (that is, it must fall within the G or PG classification). A computer game is not an exempt computer game if it contains material that would be likely to cause it to be classified M (15+) or higher. Films and computer games are also not exempt if they contain an advertisement for an unclassified film or computer game, an advertisement that has been refused approval or an advertisement for a film or computer game classified M or MA (15+), respectively, or higher.

Under Division 6 of Part 2 of the amended Commonwealth Act, the Classification Board can also issue certificates stating that unclassified films and computer games are exempt films or computer games.

[5] Section 4A

Insert after section 4:

4A Application of Act

This Act does not apply to:

- (a) exempt films or exempt computer games, or
- (b) broadcasting services to which the *Broadcasting Services Act 1992* of the Commonwealth applies.

[6] Section 15 Films to display determined markings and consumer advice

Omit section 15 (4). Insert instead:

- (4) If:
 - (a) a film is reclassified under section 39 or 97A of the Commonwealth Act, or
 - (b) the Board revokes a classification or consumer advice for a film under section 22B (3) of that Act,

display of the determined markings and consumer advice applicable to the film before that reclassification or revocation is sufficient compliance with this section for a period of 30 days after the decision to reclassify or revoke takes effect.

[7] Section 20 Category 1 restricted publications

Omit “A” from section 20 (1).

Insert instead “Subject to subsection (1A), a”.

[8] Section 20 (1A)

Insert after section 20 (1):

- (1A) Subject to any condition imposed by the Board under section 13A (2) of the Commonwealth Act, if the sale or delivery takes place in a restricted publications area, the package need not be sealed but on delivery must be contained in an opaque wrapper.

[9] Section 20 (2)

Omit the subsection. Insert instead:

(2) If:

- (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act, or
- (b) the Board revokes a classification for a publication under section 22B (3) of that Act,

it is sufficient compliance with subsection (1) for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

[10] Section 21 Category 2 restricted publications

Omit section 21 (3). Insert instead:

(3) If:

- (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act, or

(b) the Board revokes a classification for a publication under section 22B (3) of that Act,

it is sufficient compliance with subsection (1) (d) for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

[11] Sections 22A and 22B

Insert after section 22:

22A Sale or delivery of publications contrary to conditions

If a publication is classified Unrestricted or Category 1 restricted subject to a condition imposed under section 13A of the Commonwealth Act, a person must not sell or deliver the publication except in accordance with that condition.

Maximum penalty: 20 penalty units for an individual, 50 penalty units for a corporation.

22B Consumer advice for Unrestricted publications

A person must not sell a publication classified Unrestricted in respect of which the Board has determined consumer advice under section 20 (2) of the Commonwealth Act unless the consumer advice is displayed on the publication or the packaging of the publication.

Maximum penalty: 20 penalty units for an individual, 50 penalty units for a corporation.

[12] Section 23 Misleading or deceptive markings

Omit section 23 (3). Insert instead:

(3) If:

- (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act, or
- (b) the Board revokes a classification for a publication under section 22B (3) of that Act,

it is sufficient compliance with this section for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

[13] Section 34 Computer games to display determined markings and consumer advice

Insert after section 34 (4):

- (4A) A person must not make a computer game available for playing on a pay and play basis (for example, a coin operated arcade game) unless the determined markings relevant to the classification of the computer game and relevant consumer advice, if any, are displayed on the device used for playing the game.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

- (4B) If two or more computer games are available for playing on a device referred to in subsection (4A), the determined markings and consumer advice to be displayed on the device are those relevant to the computer game with the highest classification.

[14] Section 34 (5)

Omit section 34 (5). Insert instead:

- (5) If:
- (a) a computer game is reclassified under section 39 of the Commonwealth Act, or
 - (b) the Board revokes a classification or consumer advice for a computer game under section 22B (3) of that Act,
- display of the determined markings and consumer advice applicable to the computer game before that reclassification or revocation is sufficient compliance with this section for a period of 30 days after the decision to reclassify or revoke takes effect.

[15] Section 38 Publishing of advertisements—approvals under the Commonwealth Act

Omit section 38 (1). Insert instead:

- (1) A person must not publish an advertisement for a film, publication or computer game:
 - (a) if the advertisement has been refused approval, or would be refused approval if submitted for approval, under section 29 of the Commonwealth Act, or
 - (b) if the advertisement was approved under section 29 of the Commonwealth Act and the approval is revoked under section 13 (5) or 21A of that Act.

Maximum penalty:100 penalty units for an individual,
200 penalty units for a corporation.

[16] Section 42 Advertisements to contain determined markings and consumer advice

Omit section 42 (2). Insert instead:

- (2) If:
 - (a) a film, publication or computer game is reclassified under section 39 or 97A of the Commonwealth Act, or
 - (b) the Board revokes a classification or consumer advice for a film, publication or computer game under section 22B (3) of that Act,

display of the determined markings and consumer advice applicable to the film, publication or computer game before that reclassification or revocation is sufficient compliance with subsection (1) for a period of 30 days after the decision to reclassify or revoke takes effect.

[17] Section 43 Misleading or deceptive advertisements

Omit section 43 (3). Insert instead:

- (3) If:
 - (a) a film, publication or computer game is reclassified under section 39 or 97A of the Commonwealth Act, or

- (b) the Board revokes a classification or consumer advice for a film, publication or computer game under section 22B (3) of that Act,

display of the determined markings and consumer advice applicable to the film, publication or computer game before that reclassification or revocation is sufficient compliance with subsection (2) for a period of 30 days after the decision to reclassify or revoke takes effect.

[18] Section 46A

Insert after section 46:

46A Calling in films for classification

- (1) If:
- (a) the Director has reasonable grounds to believe that an unclassified film is not an exempt film, and
 - (b) the film is being published in New South Wales, or the Director has reasonable grounds to believe that it will be published in New South Wales,
- the Director may, by notice in writing given to the publisher of the film, require the publisher to submit an application for classification of the film.
- (2) A person to whom such a notice is given must comply with the notice within 3 business days after it is given.
- Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.
- (3) The Director is required to publish in the Commonwealth Gazette a notice about the Director's decision under subsection (1) requiring the publisher to submit an application.
- (4) It is a defence to a prosecution for an offence under this section to prove that the defendant did not intend to publish the film (or cause it to be published) in New South Wales.

[19] Section 47 Calling in computer games for classification

Insert after section 47 (1):

(1A) If:

- (a) the Director has reasonable grounds to believe that an unclassified computer game is not an exempt computer game, and
- (b) the computer game is being published in New South Wales, or the Director has reasonable grounds to believe that it will be published in New South Wales,

the Director may, by notice in writing given to the publisher of the computer game, require the publisher to submit an application for classification of the computer game.

[20] Section 47 (3)

Insert “or (1A)” after “(1)”.

[21] Sections 48A and 48B

Insert after section 48:

48A Calling in a publication, film or computer game for reclassification

(1) If:

- (a) the Board proposes to reclassify a publication, film or computer game under section 39 of the Commonwealth Act, and
- (b) the publisher of the publication, film or computer game resides in New South Wales or has an office in New South Wales,

the Director may, by notice in writing given to the publisher, require the publisher to submit a copy of the publication, film or computer game for the purpose of reclassifying it.

- (2) A person to whom such a notice is given must comply with the notice within 3 business days after it is given.

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

- (3) It is a defence to a prosecution for an offence under this section to prove that the defendant did not have a copy of the publication, film or computer game.

48B Obtaining copies for review

- (1) If:
- (a) an application is made for a review of a classification decision under the Commonwealth Act by a person who is not the original applicant for classification of the publication, film or computer game concerned, and
 - (b) the Board or Review Board does not have a copy of the publication, film or computer game and a copy is not available to it, and
 - (c) the original applicant or the publisher of the publication, film or computer game resides in New South Wales or has an office in New South Wales,

the Director may, by notice in writing given to the original applicant or publisher, require the original applicant or publisher to make a copy of the publication, film or computer game available for the purpose of the review.

- (2) A person to whom such a notice is given must comply with the notice within 3 business days after it is given.

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

- (3) It is a defence to a prosecution for an offence under this section to prove that the defendant did not have a copy of the publication, film or computer game.

[22] Section 61A

Insert after section 61:

61A Penalty notices for certain offences

- (1) An authorised officer may serve a penalty notice on a person if:
- (a) it appears to the officer that the person has committed an offence under this Act or the regulations, and

- (b) the regulations prescribe that offence as an offence for which a penalty notice may be issued.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of, the same occurrence.
- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section:
- authorised officer*** means, in relation to a particular offence, a person belonging to a class of persons specified in the regulations in relation to that offence.

[23] Schedule 1 Savings and transitional provisions

Omit “this Act” from clause 1 (1). Insert instead:

the following Acts:

this Act

the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001*

[24] Schedule 1, clause 1 (2)

Omit “this Act”. Insert instead “the Act concerned”.

[25] Schedule 1, Part 3

Insert after clause 6:

**Part 3 Provisions consequent on Classification
(Publications, Films and Computer Games)
Enforcement Amendment Act 2001**

7 Definition

In this Part:

amending Act means the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001*.

8 Transitional provisions

- (1) Section 34 (4A) and (4B), as inserted by Schedule 1 [13] to the amending Act, apply to a computer game whether published before or after the commencement of Schedule 1 [13].
- (2) Sections 46A and 48A, as inserted by Schedule 1 [18] and [21] to the amending Act, apply to a publication, film or computer game whether published before or after the commencement of Schedule 1 [18] and [21], respectively.

Classification (Publications, Films and Computer Games) Enforcement
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Schedule 1 General amendments

- (3) An amendment to this Act made by any other provision of the amending Act applies only to:
- (a) a publication, film or computer game first published on or after the commencement of that provision, or
 - (b) a publication, film or computer game for which an application for classification is made on or after that commencement.

Schedule 2 Amendments relating to on-line services

(Section 3)

Part 5A

Insert after section 45:

Part 5A On-line services

45A Definitions

In this Part:

access has the same meaning as it has in Schedule 5 to the *Broadcasting Services Act 1992* of the Commonwealth.

Internet content has the same meaning as it has in Schedule 5 to the *Broadcasting Services Act 1992* of the Commonwealth.

Note. **Internet content** is defined so as to mean information that is kept on any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device and that is accessed, or available for access, using an Internet carriage service (as defined in that Act) but so as not to include ordinary electronic mail or information that is transmitted in the form of a broadcasting service.

matter unsuitable for minors means Internet content consisting of a film that is classified R, or that would, if classified, be classified R, or an advertisement for any such film consisting of or containing an extract or sample from the film comprising moving images.

Note. The *National Classification Code* set out in the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth ("the Code") provides for films and computer games to be classified RC that:

- (a) depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified, or
- (b) depict in a way that is likely to cause offence to a reasonable adult, a person who is, or who appears to be, a child under 16 (whether the person is engaged in sexual activity or not), or

- (c) promote, incite or instruct in matters of crime or violence. Computer games that are unsuitable for a minor to see or play may also be classified RC.

objectionable matter means Internet content consisting of:

- (a) a film that is classified X, or that would, if classified, be classified X, or
- (b) a film or computer game that is classified RC, or that would, if classified, be classified RC, or
- (c) an advertisement for a film or computer game referred to in paragraph (a) or (b), or
- (d) an advertisement that has been, or would be, refused approval under section 29 (4) of the Commonwealth Act.

on-line service means an Internet carriage service within the meaning of Schedule 5 to the *Broadcasting Services Act 1992* of the Commonwealth and includes a bulletin board.

45B Application of Part

- (1) This Part applies to an on-line service other than an on-line service, or on-line service of a class, prescribed by the regulations.
- (2) Nothing in this Part makes it an offence to supply objectionable matter or matter unsuitable for minors by means of an on-line service to any person, or class of persons, prescribed by the regulations.
- (3) A person is not guilty of an offence under this Part by reason only of the person:
- (a) owning, or having the control and management of the operation of, an on-line service, or
- (b) facilitating access to or from an on-line service by means of transmission, downloading, intermediate storage, access software or similar capabilities.

45C Making available or supplying objectionable matter on on-line service

A person must not, by means of an on-line service, make available, or supply, to another person, objectionable matter:

- (a) knowing that it is objectionable matter, or
- (b) being reckless as to whether it is objectionable matter.

Maximum penalty: 100 penalty units for an individual, 250 penalty units for a corporation.

45D Making available or supplying matter unsuitable for minors on on-line service

- (1) A person must not, by means of an on-line service, make available, or supply, to another person, any matter unsuitable for minors:

- (a) knowing that it is matter unsuitable for minors, or
- (b) being reckless as to whether it is matter unsuitable for minors.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

- (2) It is a defence to a prosecution under this section for the defendant to prove that access to the matter unsuitable for minors was subject to an approved restricted access system at the time the matter was made available or supplied by the defendant.

- (3) In this section:

approved restricted access system means:

- (a) any restricted access system within the meaning of the *Broadcasting Services Act 1992* of the Commonwealth, or
- (b) any other system of limiting access declared by the Minister, by order published in the Gazette, to be an approved restricted access system for the purposes of this definition.

45E Recklessness

- (1) A person is reckless as to whether matter is objectionable matter or matter unsuitable for minors:
 - (a) if the person is aware of a substantial risk that the matter is objectionable matter or matter unsuitable for minors, and
 - (b) that having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2) The question of whether taking a risk is unjustifiable is one of fact.