

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (**the State Act**) so as:

(a) to make consequential amendments arising from the enactment of the *Classification (Publications, Films and Computer Games) Amendment Act 2007* of the Commonwealth, and

(b) to make other amendments, including amendments relating to the giving of exemptions from the State Act for approved organisations carrying out educational, cultural or artistic activities.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* set out in Schedules 1 and 2.

Clause 4 provides for the repeal of the proposed Act after all the amendments have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments consequential on enactment of Classification (Publications, Films and Computer Games) Amendment Act 2007 of the Commonwealth

Schedule 1 makes amendments consequential on the enactment of the *Classification (Publications, Films and Computer Games) Amendment Act 2007* of the Commonwealth (**the Commonwealth amending Act**). State legislation provides complementary administrative and enforcement mechanisms for the classification of publications, films and computer games under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth (**the Commonwealth Act**).

Schedule 1 [1] amends section 4 to substitute the definition of **approved form** as a consequence of the insertion of section 8A into the Commonwealth Act by the Commonwealth amending Act, which empowers the Commonwealth Minister (and not the Director of the Classification Board) to approve a form for a notice about classifications.

Schedule 1 [2] amends section 4 to insert a definition of **Convenor** (meaning the Convenor of the Classification Review Board), consistently with the Commonwealth Act. The definition is used in provisions inserted by the Commonwealth amending Act and by the proposed Act.

Schedule 1 [3] inserts a new section 5A, in the same terms as section 14A inserted in the Commonwealth Act by the Commonwealth amending Act. The new section 14A of the Commonwealth Act clarifies that, when several previously classified films are brought together for distribution in a single device (eg a DVD), the product does not require classification simply because of the fact of compilation. Similarly, new section 5A of the State Act ensures that a single device that consists of several previously classified films is not caught by the prohibition in section 6 of the sale or public exhibition of unclassified films.

Schedule 1 [4] amends section 7 (which prohibits the sale or public exhibition of a classified film if it is sold or exhibited under a different title from that under which it was classified or with alterations or additions to the form in which it was classified) so that the section is not contravened by the sale or public exhibition of a film:

- under a title different from that under which it was classified if it is contained on one device (eg a DVD) that consists only of 2 or more classified films, or
- with modifications referred to in section 21 (2) of the Commonwealth Act as amended by the Commonwealth amending Act (including the addition or removal of navigation functions, or the addition or removal of material providing a description or translation of audio or visual content that would not cause a higher classification to be given).

The amendment made by Schedule 1 [4] complements that made by Schedule 1 [3], in that new section 5A will ensure that a compilation on a single device (eg a DVD) is not “unclassified” for the purposes of section 6, whereas new section 7 (2) (a) will ensure that such a compilation will not be subject to the prohibition in section 7 (1).

Schedule 1 [5] amends section 42 to remove a reference to the Director of the Classification Board, consistently with amendments to section 8 of the Commonwealth Act by the Commonwealth amending Act, which substitutes the Commonwealth Minister for the Director as the authority to exercise the function of determining markings for classifications.

Schedule 1 [6] amends section 48B to replace a reference to the Director of the Classification Board with a reference to the Convenor of the Classification Review Board, consistently with amendments to section 44A of the Commonwealth Act by the Commonwealth amending Act. Both sections relate to the power to require a copy of a publication, film or computer game to be made available for a review by the Classification Review Board of a classification decision.

Schedule 1 [7] amends section 58 to add a reference to the Convenor of the Classification Review Board, consistently with amendments to section 87 of the Commonwealth Act by the Commonwealth amending Act. Both sections relate to the giving of evidentiary certificates.

Schedule 2 Other amendments

Schedule 2 [1] and [2] omit the note to section 4, which sets out definitions contained in the Commonwealth Act, and references in section 4 to the note. The note was included when the Bill for the State Act was originally introduced but becomes out of date when definitions in the Commonwealth Act are amended.

Schedule 2 [3] amends section 48 to allow the Director to call in a copy of advertisements used or intended to be used for unclassified as well as classified films (consistently with the calling in of a copy of advertisements for computer games).

Schedule 2 [4] replaces section 51, which deals with the power of the Director of the Classification Board to grant exemptions from provisions of the State Act. The principal change is to provide for the exemption (subject to any ministerial directions or guidelines) of organisations that carry on activities of an educational, cultural or artistic nature. The opportunity has been taken to reorder the provisions of the section.

Schedule 2 [5] and [6] amend Schedule 1 to the State Act to enable regulations of a savings or transitional nature to be made in connection with the proposed Act and to enact specific savings provisions in connection with the substitution of section 51 dealing with exemptions.