

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.01 a.m.]: I move:

That this bill be now agreed to in principle.

New South Wales participates in the National Classification Scheme. The scheme is a cooperative arrangement between the Commonwealth, States and Territories established under the 1996 intergovernmental agreement for a cooperative censorship scheme. The Commonwealth Classification (Publications, Films and Computer Games) Act 1995 establishes the framework for the making of classification decisions with respect to the sale and public exhibition of films, computer games and some publications. The Commonwealth Attorney-General's Department administers the scheme. The scheme works on the principle that the Commonwealth, State and Territory censorship Ministers jointly agree classification policy, including the criteria applied by the boards in making their decisions.

The States and Territories have each enacted their own enforcement Act which provides for the enforcement of classification decisions, including the setting of monetary penalties and offence provisions, in accordance with the policy framework determined by the relevant State or Territory government. With the agreement of State and Territory censorship Ministers, the Commonwealth Parliament earlier this year passed amendments to the Commonwealth Act to, firstly, integrate the Office of Film and Literature Classification into the Commonwealth Attorney-General's Department. This was based on the recommendations of the report undertaken by Mr John Uhrig, AC, who conducted a review of the corporate governance of Commonwealth statutory authorities and office holders.

Secondly, to give the convenor of the Review Board separate statutory powers to manage the administrative functions of the Review Board, separately from the Classification Board. Thirdly, to clarify that the packaging of more than one previously classified film onto one storage device will not require a fresh classification of the compiled films. Fourthly, to clarify that the addition of navigation aids, subtitles or similar material to an already classified film will not require the film to be reclassified. Fifthly, to enable persons authorised by the Director of the Classification Board to make recommendations to the Classification Board about the classification of additional content released with already classified films. Additional content may include such things as out-takes. Sixthly, to confer responsibility for determining markings and their display on the Commonwealth Minister after consultation with participating Ministers. Finally, to allow the Director of the Classification Board to exempt an organisation in relation to computer games so that an exemption can be given, under State enforcement Acts, to an approved organisation with respect to their activities and functions relating to both film and computer games.

The Commonwealth amending legislation is being commenced in stages because of the need for States and Territories to amend their legislation to accommodate the changes to the Commonwealth Act. The entire Commonwealth Classification (Publications, Films and Computer Games) Amendment Act 2007 will commence by 15 March 2008. Amendments to the Commonwealth Act facilitating the integration of the Office of Film and Literature Classification into the Commonwealth Attorney-General's Department came into effect from 1 July 2007. As indicated previously, the integration implemented recommendations of the Uhrig review, so that the Office of Film and Literature Classification ceased to exist as a separate agency on 1 July 2007. The Australian Attorney-General's Department will continue to provide the information, advice and support previously provided by the office.

Distinctions between the administration of the board and Review Board are strengthened by amendments to the Commonwealth Act. Various powers previously exercised by the Director of the Classification Board, such as issuing classification certificates following a decision of the Review Board, have been conferred on the convenor of the Review Board in so far as those powers are necessary for the convenor to properly attend to the business of the Review Board. These amendments rectify an anomalous situation whereby the Director of the Board has been responsible for exercising powers relating to the operations of the Review Board.

The functions of the Board and the Review Board are unchanged. Changes to the convenor's powers relate to the issue of classification certificates, the written notice of a decision and the delegation of powers to other Review Board members and public service staff. The convenor now has the power to waive fees payable to the Review Board. This new role for the convenor has presented the opportunity to make a new legislative instrument setting out the fee waiver principles for both the Board and the Review Board. Consultation between the Commonwealth and the States and Territories is in progress.

Changes to the Commonwealth Act require some cognate amendments to the New South Wales Classification (Publications, Films and Computer Games) Enforcement Act 1995, as well as to the classification enforcement laws in other jurisdictions. The consequential amendments to the New South Wales Act are contained in this bill. In particular, the bill amends the definition of "approved form" in the Act to take account of the fact that the Commonwealth Act now provides for the Commonwealth Minister and not the Director of the Classification Board to approve a form for notice about classifications. The notice is the technical means by which the markings for each type of classification giving information about the classification and the manner in which the markings are to be displayed. The Commonwealth Act requires the Commonwealth Minister to consult with participating

Ministers before making a determination.

The bill also makes amendments to the New South Wales Act to take account of the new powers of the convenor to obtain copies of material the subject of an application for review before the Review Board and to issue evidentiary certificates relating to classification decisions of the Review Board. Evidentiary certificates are used in other court proceedings, for instance, in the prosecution of contraventions of the New South Wales Act, and are prima facie evidence of the matters stated in the certificate. Further, the bill accommodates changes made to the Commonwealth Act relating to the definition of "film" and to allow for the addition of descriptions or translations and navigation functions to an already classified film without requiring reclassification.

Firstly, the definition of "film" has been amended by section 14A of the Commonwealth amending Act so that it is clear that when previously classified films are brought together on a single device, the product does not require classification simply because of the fact of compilation. This amendment is a response to changing technologies that ensure the regulatory burden to industry is not inadvertently increased, and this bill makes the required changes to the New South Wales law. In particular, section 7 (a) of the New South Wales Act currently makes it an offence to sell or publicly exhibit a classified film unless the film is sold or exhibited with the same title as that under which it is classified. So, if a number of already classified films were compiled onto one DVD, which was then marketed under a single named product, section 7 (a) is, without the amendment in this bill, contravened.

New section 5A of this bill incorporates section 14A of the Commonwealth Act into the New South Wales Act in the same terms and makes amendments to section 7 of the New South Wales Act to provide that the prohibition on selling or exhibiting a classified film other than with the title under which it is classified is not contravened by the sale or public exhibition of a film that is under a title different from that under which it was classified if it is contained on one device consisting of two or more classified films. The inclusion of the new section 5A in this bill also ensures that section 6 of the New South Wales Act, which prohibits the sale of an unclassified film, is not breached by a compilation of several classified films onto on a single device.

Section 7 is also amended to take account of modifications referred to in section 21 (2) of the Commonwealth Act. The general rule in section 21 (1) of the Commonwealth Act is that if a classified film is modified it becomes unclassified when the modification is made. Section 21 (2) of the Commonwealth Act provides for certain exceptions to the rule, so that declassification does not occur. Section 7 (b) of the New South Wales Act prohibits the sale or public exhibition of a classified film unless it is sold or exhibited in the form in which it was classified. Hence a film that is modified other than in conformity with the exceptions in section 21 (2) of the Commonwealth Act cannot be sold or exhibited in New South Wales unless it is reclassified. The Commonwealth amending Act amends section 21 (2) so that adding subtitles, captions, dubbing and audio descriptions to an already classified film will not amount to a modification of the classified film that would require the film to be reclassified. Similarly, the addition of navigation aids that assist the viewer to move around a film will not require the film to be reclassified.

The Commonwealth amendment has highlighted the need to ensure that modifications that will not affect the classification status of the film as set out in section 21 (2) of the Commonwealth Act do not render the film unsaleable or unable to be publicly exhibited in New South Wales. Hence the bill makes a consequential amendment to section 7 of the New South Wales Act to the effect that the sale or public exhibition of films modified in accordance with section 21 (2) of the Commonwealth Act are not unlawful in New South Wales. The New South Wales Act, while primarily concerned with offence and enforcement matters, also provides some scope for organisations approved by the Director of the Classification Board to apply for an exemption from classification with respect to a specific film at a specific event.

However, there is less scope for an exemption that would permit a cultural institution to apply for a broad exemption relating to ongoing public exhibition of interactive multimedia exhibitions that incorporate changing moving images or selections from a back catalogue of archived moving images, which may not be otherwise exempt. To accommodate the contemporary moving image exhibitions that are intrinsically unsuitable for classification and to facilitate the exhibition of archived film material, this bill provides a mechanism, similar to that recently introduced into the Victorian enforcement Act, for exemption from the provisions of the New South Wales Act for organisations that carry on activities of an educational, cultural or artistic nature approved by the director of the Classification Board.

The Victorian amendments were designed to accommodate an exemption for the public exhibition of contemporaneous interactive moving images and other films and computer games held by the Australian Centre for Moving Image, a Victorian cultural institution. An amendment to the Commonwealth Act to provide a power to exempt an organisation in relation to computer games was made to facilitate the amendment to the Victorian enforcement Act. This Commonwealth amendment will also facilitate the making of exemptions under this proposed amendment to the New South Wales Act. The amendments to section 51 of the bill will enable approved New South Wales cultural institutions to apply to the director of the Classification Board for an exemption from the classification scheme for the purpose of all or any of its activities or functions that relate to films or computer games.

The bill gives the director some guidance as to the types of organisations that may be approved for the purpose of applying for an exemption. The reputation of the organisation in relation to film and computer games, and the conditions it intends to impose concerning the admission of people to exhibitions involving film or computer games are included in the matters the director must have regard to in determining whether to approve an organisation. The director is also required to give effect to any ministerial directions and guidelines in relation to approving an organisation under section 51. The classification scheme assists families in making appropriate entertainment choices. The proposed amendments will assist in maintaining the integrity of the classification scheme. I commend the bill to the House.