

2001

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)  
(ENFORCEMENT) AMENDMENT BILL 2001**

**EXPLANATORY MEMORANDUM**

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## **CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (ENFORCEMENT) AMENDMENT ACT 2001**

### **BACKGROUND**

Censorship in Australia occurs under a revised cooperative Commonwealth, State and Territory legislative scheme which came into effect on 1 January 1996. The *Classification (Publications, Films and Computer Games) Act 1995 (Cth)* ("the Commonwealth Act") uses the Territories power in section 122 of the Constitution to create a system for *classifying* materials in the ACT. Classification is carried out by the Board of the Office of Film and Literature Classification ("OFLC") which is a Commonwealth Authority. State and Territory legislation provides for the *enforcement* of OFLC decisions throughout Australia, as the Commonwealth lacks the constitutional power to achieve this end. The relevant ACT Act is the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* ("the principal Act").

In April 1999, Commonwealth, State and Territory Censorship Ministers agreed to a number of changes to the classification scheme. Of those that have been persevered with, some will be fully effected by changes to the Commonwealth Act. Those that require amendments to State and Territory legislation will be implemented through model legislative provisions. This Bill amends the principal Act in line with these model provisions.

Federal Parliament passed the *Classification (Publications, Films and Computer Games) (Amendment) Act 2001 (Cth)* to amend the Commonwealth Act on 1 March 2001. The amendments to the Commonwealth Act will commence upon proclamation, or by default on 23 March 2002. It is anticipated that a uniform commencement date will be agreed between jurisdictions if State and Territory legislation is in place prior to 23 March 2002.

## **SUMMARY OF CLAUSES**

### **Clauses 1 - 3: Formal clauses:**

Clause 1 provides that the name of the Act is the *Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2001*.

Clause 2 provides for the Act's commencement on a day fixed by the Minister or, by default, on 23 March 2002 which is the date for default commencement of the Commonwealth Act.

Clause 3 states that the Bill amends the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*.

### **Clause 4: Interpretation [section 3]:**

Clause 4 inserts definitions of "exempt computer game" and "exempt film" into section 3 of the principal Act.

This reflects changes to the Commonwealth Act which clarify and expand the types of films and computer games which are exempt from classification requirements. These are products which generally have a limited market appeal. As the cost of classification services may have a disproportionate impact upon these products, this change will encourage their availability on the Australian market.

Clause 4 also defines "international flight" and "international voyage" for the purposes of the definition of "place" introduced by clause 5.

**Clause 5: Definition of place [section 3]:**

Clause 5 amends the definition of "place" in section 3 of the principal Act to exclude vessels on international voyages and aircraft on international flights. This is intended to exempt these carriers from provisions of the principal Act that regulate activities occurring within public places.

This will address the difficulties associated with enforcing classification requirements on international voyages and flights. Effective prosecution may be untenable where a carrier is successively subject to the jurisdiction of several States and Territories within a short time period and for only a small proportion of a given journey.

**Clause 6: Application of Act [section 5]:**

This clause adds exempt films and exempt computer games to those things to which the principal Act does not apply.

**Clause 7: Films to bear determined markings and consumer advice [section 18(4)]:**

Section 18 of the principal Act sets out markings and consumer advice which must and must not appear on films for sale, given their classification status and particular classification.

Under the Commonwealth Act, the OFLC Board has a general power to reclassify items provided two years have lapsed since the most recent classification was awarded. In such an event, a 30 day change-over period applies, within which superseded markings and advice on a product will not attract a penalty. Amendments to the Commonwealth Act will introduce two

additional provisions under which a product may be reclassified and/or new consumer advice may be issued for a product:

- new section 97A, which enables the Board to reclassify an item that was classified prior to 1 January 1996; and
- new section 22B, which clarifies the procedure to be followed if the Board is uncertain as to whether it has already classified an item and provides for revocation of an earlier classification decision and/or consumer advice.

Clause 7 applies the changeover period to markings and/or consumer advice displayed on films where a film has been reclassified under these additional circumstances.

**Clause 8: Category 1 Restricted publications [sections 26(2) and 26(3)]:**

Section 26(1) of the principal Act presently requires a Category 1 Restricted Publication to be sold in a sealed package. This clause will provide that, (subject to a contrary condition imposed under the Commonwealth Act), the package need not be sealed if the sale/delivery occur within a restricted publications area. However, the package will still need to be contained in an opaque wrapper upon delivery to the purchaser.

Section 26(1) of the principal Act also sets out markings which must appear on a Category 1 Restricted publication for sale or delivery. Clause 8 applies to this section a provision regarding superseded markings which is relevantly similar to the provision discussed at Clause 7.

**Clause 9: Category 2 Restricted publications [section 27(3)]:**

Section 27(2)(b) of the principal Act sets out markings which must appear on a Category 2 Restricted publication for publishing. Clause 9 applies to this section a provision regarding superseded markings which is relevantly similar to the provision discussed at Clause 7.

**Clause 10: New Sections 27A and 27B:**

*New Section 27A*

Amendments to the Commonwealth Act will allow publications to be classified Unrestricted on condition that they are sold, displayed for sale or delivered in a sealed package. This aims to prevent access by young children to publications which may not be suitable for them but may be suitable for older children or adults.

Amendments to the Commonwealth Act will also allow a publication to be classified Category 1 Restricted on condition that it is sold, displayed for sale or delivered in a sealed package made of plain opaque material. This is relevant if a publication would only go beyond what is permitted in this classification because of its cover.

New section 27A provides for the enforcement of both types of condition.

*New Section 27B*

Amendments to the Commonwealth Act will allow the OFLC to issue consumer advice for an unrestricted publication.

New section 27B provides for the enforcement of any such condition.

**Clause 11: Misleading or deceptive markings [section 29(3)]:**

Section 29 of the principal Act sets out markings which must not appear on publications for publishing. Clause 11 applies to this section a provision regarding superseded markings which is relevantly similar to the provision discussed at Clause 7.

**Clause 12: Computer games to bear determined markings and consumer advice [new section 39(3A) and (3B)]:**

Section 39 of the principal Act sets out markings and consumer advice which must and must not appear on a computer game for sale. New section 39(3A) extends these requirements to devices such as arcade games. New section 39(3B) ensures that if more than one game can be played through a single device, the device must bear the markings and consumer advice applicable to the most highly classified game.

**Clause 13: Computer games to bear determined markings and consumer advice [section 39(4)]**

Clause 13 applies to section 39 a provision regarding superseded markings and/or consumer advice which is relevantly similar to the provision discussed at Clause 7. Reclassification under section 97A of the Commonwealth Act is not dealt with as computer games were not classified prior to 1 January 1996.

**Clause 14: Computer games to bear determined markings and consumer advice [section 39]:**

Clause 14 allows for the subsections of section 39 to be renumbered when the Act is next reprinted.

**Clauses 15: Certain advertisements not to be published [section 44(1)(b)]:**

This clause allows for an additional matter to be included in section 44(1), which deals with advertisements which may not be published without reasonable excuse.

**Clause 16: Certain advertisements not to be published [new section 44(1)(c)]:**

This clause adds to those advertisements which may not be published without reasonable excuse under section 44(1) advertisements approved under section 29 of the Commonwealth Act if their approval was subsequently revoked.

**Clause 17: Advertisement to contain determined markings and consumer advice [section 50(2)]:**

Section 50(1) of the principal Act sets out markings and consumer advice which must appear on advertisements for publishing. Clause 15 applies to this section a provision regarding superseded markings and/or consumer advice which is similar to the provision discussed at Clause 7.

**Clause 18: Misleading or deceptive advertising [section 51(3)]:**

Section 51 of the principal Act deals with markings which must not appear on an advertisement for publishing. Clause 16 applies to this section a provision regarding superseded markings which is relevantly similar to the provision discussed at Clause 7.



**Clause 19: Application of amendments [section 69]:**

This clause provides that new sections 39(3A) and 39(3B) (as inserted by clause 12) apply to computer games published before or after the Act's commencement. The amendments set out in the Schedule (see below) will also apply prospectively and retrospectively. All other amendments will only apply to publications, films or computer games first published before the amendments commence, or for which an application for classification was made prior to commencement.

**Schedule 1.**

Schedule 1 to the Bill contains amendments that alter the style of the principal Act. These amendments are part of a process by the Parliamentary Counsel's Office to modernise the layout and language of all ACT statutes. The opportunity has been taken to make the principal Act consistent with current legislative drafting practices. Altering the style of the principal Act will cast it in plainer language with more commonly used words and shorter sentences for ease of reading. A dictionary for the special meanings of words in the Act is included in place of interpretation provisions in order to make the principal Act easier to use.