

EXPLANATORY STATEMENT

ORDINANCE NO. 1 OF 1994

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

SEAT OF GOVERNMENT (ADMINISTRATION) ACT 1910

CLASSIFICATION OF PUBLICATIONS (AMENDMENT)
ORDINANCE 1994

Subsection 12(1) of the *Seat of Government (Administration) Act 1910* provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory including for the purpose of censorship.

The *Classification of Publications Ordinance 1983* ('the Principal Ordinance'), which commenced on 1 February 1984, provides for the classification of publications and films (including video cassettes) in the Australian Capital Territory. It is part of a censorship classification scheme agreed to in July 1983 by Commonwealth, State and Territory Ministers with responsibility for censorship matters.

The purpose of the Ordinance is to provide for the classification of computer games and computer generated images. There is widespread community concern about violent, and particularly sexually violent, material in computer games available to children. In response to this concern, and after consultation with industry and community groups, Commonwealth, State and Territory Ministers responsible for censorship agreed on a classification scheme for computer games and computer generated images at their meeting on 4 November 1993.

The Ordinance amends the Principal Ordinance to provide that computer games and computer generated images in the Australian Capital Territory be subject to a censorship classification scheme similar to that provided for films by the Principal Ordinance. The States and Territories will adopt, for the purposes of complementary enforcement legislation, the computer games classification decisions made under the Ordinance. It is up to each State and Territory to decide what classifications they allow to be sold, hired or made available in amusement arcades and under what conditions.

Classification guidelines for computer games have been exposed to public comment and subsequently agreed to by States and Territories. The classification guidelines are based on those for films and videos but are more restrictive in each category due to concern about the possible impact of computer games.

The provisions of the Ordinance:

- provide for the classification of computer games and computer generated images as 'G', 'G (8+)', 'M (15+)', 'MA (15+)', 'R (18+)', 'X (18+)' and 'Refused Classification'. The new classification 'G (8+)' is included on the advice of early childhood experts that very young children cannot distinguish between fiction and non-fiction and may confuse the mild, stylised violence found in some computer games with non-fictional, realistic representations of violence;
- include, as an additional classification principle for publications (including films and computer games), the requirement to take account of community concerns about depictions which condone or incite violence, particularly sexual violence, or the portrayal of persons in a demeaning manner;
- allow applicants for classification to submit assessments for advisory classifications ('G', 'G (8+)', 'M (15+)') including recommendations on classification and consumer advice for computer games prepared by persons authorised for this purpose by the Chief Censor;
- require the Censorship Board, Board Members and Deputy Censors to classify computer games and computer generated images in accordance with specified criteria;
- recognise the classification guidelines approved by Commonwealth, State and Territory Censorship Ministers which are used in applying the classification criteria for publications, films and computer games;
- provide for review of computer game classification decisions of the Censorship Board, Board Members and Deputy Censors by the Film and Literature Review Board; and
- provide for conditions to apply to the sale, hire or demonstration of computer games classified as 'MA (15+)', 'R (18+)' or 'X (18+)' ('the restricted classifications').

Details of the Ordinance are set out in the attachment.

ATTACHMENT

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the *Classification of Publications (Amendment) Ordinance 1994*.

Section 2 provides for the commencement of the Ordinance. Sections 1 and this section commence on the day on which this Ordinance is notified in the *Gazette*. The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

Section 3 provides that the "Principal Ordinance" to which the Ordinance refers is the *Classification of Publications Ordinance 1983*.

Section 4 amends section 3 of the Principal Ordinance to:

- extend the definitions of 'advertising matter', 'objectionable publication' and 'publication' to include computer games;
- add definitions for 'bulletin board', 'computer generated image', 'computer program', 'contentious', 'demonstrate', 'entertainment' and 'telecommunications network'.

Section 5 amends the Principal Ordinance by inserting a new section 3A that defines a 'computer game' to be a computer program or computer generated image intended for entertainment. Bulletin boards and business, accounting, professional, scientific or educational programs are excluded from the definition unless they contain a computer game that would, if classified, be classified with an 'MA (15+)' or higher classification or be refused classification.

Section 6 amends the heading to Division 1 of Part III of the Principal Ordinance which reads 'Publications other than films' so that it now reads 'Publications other than films or computer games'.

Section 7 amends section 17 of the Principal Ordinance so that computer games as well as films are excluded from the definition of 'publication' for the purposes of Division 1.

Section 8 amends the heading to Division 2 of Part III of the Principal Ordinance which reads 'Films' so that it now reads 'Films and computer games'.

Section 9 amends section 22A of the Principal Ordinance to include computer games in the definition of 'previous decision' for the purposes of the classification of films and computer games under Division 2.

Section 10 amends section 23 of the Principal Ordinance, which deals with applications for classification of films, to make provision for applications for classification of computer games.

- New subsection 23(2A) sets out the procedure for applying for classification of a computer game, including the information to be supplied about the game, the payment of a determined fee and, if required by the Chief Censor, any related advertising material. In addition, where a computer game contains any game play that is likely to be contentious, that is, any game play that a reasonable adult would consider unsuitable for a person under 15, the applicant must also provide a video tape recording of it.
- New subsection 23(2B) allows applicants for classification of computer games they expect to be classified as 'G' or 'G (8+)' or 'M (15+)' (the advisory classifications) to submit assessments and recommendations for advisory classifications and consumer advice for those games prepared by persons authorised for this purpose by the Chief Censor. This provision addresses the difficulty of assessing 'open ended' computer games, while at the same time permitting a close degree of supervision of the industry, and therefore maintaining the integrity of the classification scheme.
- New subsections 23(2C) and (2D) provide that where the Chief Censor or Censorship Board disagrees with an assessment containing a recommendation for an advisory classification, the Chief Censor will notify the applicant with the details of the disagreement and allow the applicant 14 days to make a submission in reply. This provision will enable the applicant to clarify the original submission in light of the classification guidelines, and for the Censorship Board to assist applicants who have misinterpreted the guidelines in an assessment. If after this exchange there continues to be a disagreement about the Censorship Board's decision, the applicant may apply for review of the decision by appeal to the Review Board as provided by section 19.

Section 11 amends the Principal Ordinance by inserting new sections 23AA and 23AB to require that certain computer games be produced for classification.

- New section 23AA provides that the Chief Censor may require a publisher of a computer game to submit it for classification if it is likely to contain contentious material and it has been, or will be published in the Australian Capital Territory. A direction from the Chief Censor to submit an application must be complied with within 3 business days after the notice is given. Failure to obey a direction of the Chief Censor is an offence.
- New section 23AB provides that if State or Northern Territory legislation confers a power similar to that in section 23AA on the Chief Censor, he or she may exercise that power.

Section 12 amends section 24 of the Principal Ordinance which provides for the screening of a film after an application for classification has been received to also allow the Chief Censor to require a demonstration of a computer game after an application for classification of a game has been received.

Section 13 amends the Principal Ordinance by inserting a new section 25A that provides for approval of a computer game classification by the Censorship Board and the provision of consumer advice.

- Subsection 25A(1) contains the criteria by which the Board must approve the classification of computer games as 'G', 'G (8+)' and 'M (15+)'.

- Subsections 25A(2), 25A(3) and 25A(4) contain the criteria by which the Board must approve the classification of computer games as 'MA (15+)', 'R (18+)', 'X (18+)' respectively.
- Subsections 25A(5) and 25A(6) contain the criteria by which the Board must refuse to approve the classification of a computer game.
- Subsections 25A(7) and 25A(8) provide that the Board must not approve the classification of a computer game which includes advertising for another computer game which has a higher classification or is unclassified or refused classification.
- Subsection 25A(9) requires that if the Board approves the classification of a computer game, it must also determine the consumer advice that applies to that game.

Section 14 amends the Principal Ordinance by inserting a new section 26AA that sets out the procedure by which computer games are to be approved according to the classification criteria set out in section 25A.

Section 15 amends section 26A of the Principal Ordinance which sets out certain presumptions relating to applications for the classification of films so that those presumptions also apply to applications for the classification of computer games.

Section 16 amends section 27 of the Principal Ordinance which provides for the Chief Censor to classify films according to the classification approved by the Censorship Board, its members or a Deputy Censor, so that the Chief Censor must also classify computer games according to the classification approved by the Censorship Board etc.

Section 17 amends section 28 of the Principal Ordinance which allows the Censor to approve advertising matter for films and impose conditions on that approval so that the Censor has the same power in relation to computer games.

Section 18 amends section 28AA of the Principal Ordinance which requires the Chief Censor to give written notice of classifications and advertising approvals for films to the applicant or publisher so that the same notice requirements apply to decisions made about computer games.

Section 19 amends section 28AB of the Principal Ordinance which allows applications to the Review Board for review of classifications or advertising approvals for films so that similar applications for review may be made for decisions about classification and advertising approvals for computer games.

Section 20 amends section 28AC of the Principal Ordinance which empowers the Review Board to hear and determine an application for review made under section 28AB so the Board may also deal with applications for review of decisions about classification and advertising approvals for computer games.

Section 21 amends section 28A of the Principal Ordinance which allows the Attorney-General to direct the Censorship Board to review a previous decision about a film or allows the Board to do so of its own motion so that the Attorney-General and the Board have the same powers with respect to review of a previous decision about a computer game.

Section 22 amends section 28B of the Principal Ordinance which requires the Chief Censor to give to the applicant and publisher prior notice of review of a previous decision about a film so that such a requirement also applies to a review of a previous decision about a computer game.

Section 23 amends section 28C of the Principal Ordinance which sets out the procedures and criteria for review by the Censorship Board of a previous decision about a film so that those procedures and criteria apply to a review of a previous decision about a computer game.

Section 24 amends section 29 of the Principal Ordinance which requires the Chief Censor to give notice of a decision of the Censorship Board regarding a review of a previous decision about a film made under section 28C so that such a requirement also applies to a decision made under that section in relation to a previous decision about a computer game.

Section 25 amends section 30 of the Principal Ordinance which sets out the circumstances in which the original applicant, the publisher of the film or advertising matter or the Attorney-General may apply to the Review Board for a further review of a previous decision about a film so that this section also applies to a previous decision about a computer game.

Section 26 amends section 31 of the Principal Ordinance which sets out the procedures for hearing and determining an application made to the Review Board under section 30 so that the same procedure applies to applications made under that section with respect to computer games.

Section 27 amends section 32 of the Principal Ordinance which provides that a classified film loses its classification if it is modified so that when a classified computer game is modified it also becomes unclassified.

Section 28 amends the Principal Ordinance by inserting a new section 32A that provides that a classified computer game becomes unclassified if it contains contentious material that has not been brought to the attention of the Censorship Board.

Section 29 amends section 33 of the Principal Ordinance which provides that an application for the classification of film cannot be made where that film is the subject of a yet to be determined application for classification or the subject of a review of a classification so that the same provisions apply to applications for the classification of computer games.

Section 30 amends section 34 of the Principal Ordinance which sets out the criteria for classification of publications and films to extend the criteria to cover the classification of computer games and to insert the following new provisions.

- New paragraph 34(2)(c) adds 'the need to take account of community concerns about depictions which condone or incite violence, particularly sexual violence or the portrayal of persons in a demeaning manner' as an additional principle that classification officers, Review and Censorship Board members and deputy censors are required, as far as possible, to give effect to in performing their functions under the Principal Ordinance. This principle is included in response to widespread community concern about these issues.

- New paragraph 34(4)(c) adds the classification guidelines, determined according to new subsections 34(4A) and 34(4B), to the matters that classification officers, Review and Censorship Board members and deputy censors must take into account when deciding what classification should be given to a publication (other than advertising material).
- New subsection 34(4A) provides that the classification guidelines may be determined by the Attorney-General by notice in the *Gazette* with the agreement of the State and Territory Censorship Ministers that are part of the Commonwealth, State and Territory scheme for the classification of publications, films and computer games concerned. It will give formal recognition in Australian Capital Territory legislation to the classification guidelines, approved by the Attorney-General and State and Territory Censorship Ministers, which are currently taken into account in classification decisions.
- New subsection 34(4B) provides that if the classification guidelines are amended the Attorney-General must publish the amended guidelines in the *Gazette*.

Section 31 amends the Principal Ordinance by inserting a new section 35A to provide for conditions to apply to the sale, hire and delivery of classified computer games to certain persons. These conditions include:

- that a classified computer game not be demonstrated in a public place unless the container bears the determined markings;
- that a computer game not be sold, hired, or demonstrated if it includes a trailer advertising another computer game of a higher classification;
- that an 'MA (15+)' game not be sold, hired or delivered to a person under 15 years;
- that an 'R (18+)' or 'X (18+)' game not be sold, hired or delivered to a person under 18 years; and
- that an 'X (18+)' game not be demonstrated except in an area restricted to persons over 18 years, nor delivered to a person who has not made a direct request for it, nor delivered except in an opaque wrapper.

Subsections 35(6) and 35(7) provide for classification markings to be determined by the Chief Censor.

Section 32 amends section 36 of the Principal Ordinance which allows the Review Board to revoke the classification of a film so that the Board also has power to revoke the classification of a computer game.