

2008

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**CLASSIFICATION (PUBLICATIONS, FILM AND COMPUTER GAMES)
(ENFORCEMENT) AMENDMENT BILL 2008 (No 2)**

EXPLANATORY STATEMENT

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**CLASSIFICATION (PUBLICATIONS, FILM AND COMPUTER GAMES)
(ENFORCEMENT) AMENDMENT BILL 2008 (No 2)**

Overview of Bill

The Classification (Publications, Film and Computer Games) (Enforcement) Amendment Bill 2008 (No 2) (the Bill) amends the *Classification (Publications, Film and Computer Games) (Enforcement) Act 1995* (Act).

The Bill puts in place amendments that are complementary to amendments made in the Commonwealth *Classification (Publications, Films and Computer Games) Amendment Act 2007* (Commonwealth Act). The amendments provide for the integration of the Office of Film and Literature Classification into the Commonwealth Attorney-General's Department. They also remove the need to reclassify a film that has been modified, or a compilation of classified films, on a disc.

The Bill also puts in place amendments complementary to those contained in the Commonwealth Classification (Publications, Films and Computer Games) Amendment (Assessment and Advertising) Bill 2008. This Bill removes the current prohibition on advertising unclassified films and provides for industry self-assessment of the likely classification of advertisements.

The scheme for classification of publications, films and computer games is a cooperative one, underpinned by the Commonwealth Act and the States' and Territories' classification enforcement legislation. The Act provides for the implementation in the ACT of the classification of material in accordance with the National Classification Code and the Guidelines (Guidelines for the Classification of Films and Computer Games 2005 and Guidelines for the Classification of Publications 2005), made under the Commonwealth Act. In particular, it provides restrictions and conditions on the sale and possession of films, computer games and certain publications, the way in which material may be advertised and exemptions of material and organisations from the classification regime.

The Commonwealth Act establishes the Classification Board, which is responsible for deciding the classification of material, and the Classification Review Board. The Act also sets out the types of classifications; procedures for the classification of publications, films and computer games; requirements for approval for advertisements for materials (including advertisements for unclassified films); and review of classification decisions.

At the Standing Committee of Attorneys-General meeting in April 2007, all State and Territory Censorship Ministers agreed in principle to the amendments contained in the *Classification (Publications, Films and Computer Games) Amendment Act 2007* and the Classification (Publications, Films and Computer Games) Amendment (Assessment and Advertising) Bill 2008, and to amend their corresponding enforcement legislation to reflect the Commonwealth amendments.

The purpose of the amendments contained in the *Classification (Publications, Films and Computer Games) Amendment Act 2007* is twofold. The first aim is to give effect

to the decision to integrate the Office of Film and Literature Classification into the Australian Government Attorney-General's Department. There are amendments in this Bill that reflect the change in that status with the introduction of the Convenor of the Review Board.

The second purpose of the amendments to the Commonwealth Act focuses on improvements to the functioning of the National Classification Scheme. Chiefly, the amendments ensure that the scheme adequately keeps abreast of technological changes in the industry. The amendments address industry concerns about the current practice of re-classifying already classified material when modifications such as subtitles, captioning and navigation menus are added. Reclassification will not be needed in the future for such modifications.

When compilations of classified films are put together onto one storage device such as a DVD, the previous provisions of the Act made it necessary to reclassify the compilation as a new film. Additional but related material, such as additional scenes, interviews and featurettes, taking their meaning from the main classified DVD film, is often included on the same DVD. Under the previous provisions of the Act, the additional material would constitute a separate 'film' requiring classification. The amendments to the Commonwealth Act provide for accredited assessors to recommend the classification and consumer advice of the additional content. The amendments will ensure that compilations of classified films in a disc will not require reclassification solely because of the compilation, and that additional material will not require classification.

The Bill puts in place amendments that ensure that the types of modification permitted to classified material, production of compilations or inclusion of additional related material will not result in enforcement action.

The amendments contained in the Classification (Publications, Films and Computer Games) Amendment (Assessment and Advertising) Bill 2008 (No 2) enable unclassified films and computer games to be advertised prior to classification in accordance with specified conditions. Currently, products are only available for classification very close to their release date (this has been deemed necessary because of concerns about piracy). At the same time, the prohibition of unclassified advertisements in the products restricts the ability of industry to market them effectively. The amendments will require a new advertising scheme message to be displayed with the product directing consumers to check the classification. The advertising scheme is to be developed in consultation with the State and Territory Censorship Ministers.

The Bill puts in place amendments that ensure that the advertisements for unclassified material under the new scheme will not result in enforcement action, and that breaches of the new scheme can be enforced.

The new offences that have been prepared to reflect the enforcement of the new advertising scheme are strict liability offences. This is consistent with the other offence provisions contained in the Act. Section 23 of the *Criminal Code 2000* provides that if a law that creates an offence provides for strict liability, there are no fault elements for the physical elements of the offence. Essentially, this means that

conduct alone is sufficient to make the defendant culpable. However, if strict liability applies, the defence of mistake of fact is available where the person considered whether or not facts existed and was under a mistaken but reasonable belief about the facts. Other defences, such as intervening conduct or event, are also available.

Offences incorporating strict liability elements are carefully considered when developing legislation and generally arise in a regulatory context where for reasons such as public safety or protection of the public revenue, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. The rationale is that professionals engaged in producing or distributing films, videos, computer games or publications as a business, as opposed to members of the general public, can be expected to be aware of their duties and obligations. The provisions are drafted so that, if a particular set of circumstances exists, a specified person is guilty of an offence. Unless some knowledge or intention ought be required to commit a particular offence (in which case a specific defence is provided), the defendant's frame of mind at the time is irrelevant. The penalties for offences cast in these terms are lower than for those requiring proof of fault.

Clause Notes

Clause 1 - Name of Act names the Act as the *Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2008 (No 2)*.

Clause 2 - Commencement commences the Act on the day after its notification day, except for schedule 2 which commences on the later of the day the *Classification (Publications, Films and Computer Games) Amendment (Assessment and Advertising) Act 2008* commences or the day after its notification day.

Clause 3 - Legislation amended notes that the Act amends the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*.

Clause 4 – Dictionary, note 2, new dot point inserts the notation that the word “under” is defined in the Legislation Act.

Clause 5 – Dictionary, definition of computer game substitutes a new definition to correct a previous error.

SCHEDULE 1

Amendments consequential on the *Classification (Publications, Films and Computer Games) Amendment Act 2007 (Cwlth)*

Clause 1.1 – New Section 5A allows the inclusion of a compilation of previously classified films on one device to be treated as if each of the films was on a separate device. This removes the need for the films to be reclassified simply because they have been put into a compilation.

Clause 1.2 – New Section 7(3) adds an exception to the enforcement regime for films that are previously classified and are now part of a compilation of previously classified films on one device if they are exhibited under a different title. This supports the change in the scheme to remove the requirement for a film to be reclassified simply because it has been put into a compilation on one device.

Clause 1.3 – New section 17(2) adds an exception to the enforcement regime for films that are previously classified and are now part of a compilation of previously classified films on one device if they are sold under a different title. This supports the change in the scheme to remove the requirement for a film to be reclassified simply because it has been put into a compilation on one device.

Clause 1.4 – Section 19(4)(b) omits the reference to section 22B(3) of the Commonwealth Act. This means that future amendments to the Commonwealth Act around the classification of films will not require further amendments to the enforcement aspects of the Act.

Clause 1.5 – Section 44(7)(b) omits the reference to section 22B(3) of the Commonwealth Act. This means that future amendments to the Commonwealth Act around the classification of films will not require further amendments to the enforcement aspects of the Act.

Clause 1.6 – Section 53B(1)(b)(ii) omits the reference to decisions of the director in respect of advertising classifications. This ensures consistency with the amendments to the Commonwealth Act that changed the process of who can make decisions with respect to advertising classifications.

Clause 1.7 – Section 53B(3)(b) omits the reference to section 22B(3) of the Commonwealth Act.

Clause 1.8 – Section 56(1) extends the existing arrangements for the Minister or director to approve an organisation only in relation to the exhibition of a film at a specified event by including a broader scheme where the Minister or director may approve, on application, an organisation in relation to all or any of its activities that relate to films or computer games. This will give approved organisations more certainty about the manner in which they may conduct themselves in relation to films and computer games and reduce the administration associated with their activities.

Clause 1.9 – New Section 57(2A) adds a qualification to substituted section 56(1)(b) so that the approval of an organisation under the broader scheme will only apply to organisations carrying on educational, cultural or artistic activities, and will not apply to commercial businesses.

Clause 1.10 – New section 57(6) supports the changes to section 57(2A).

Clause 1.11 – Section 63(1) is amended to allow the Convenor to issue evidentiary certificates in addition to the director and deputy director, consistent with amendments to section 87 of the Commonwealth Act.

Clause 1.12 – Dictionary, definition of approved form is amended so that the definition reflects the form approved under section 8A of the Commonwealth Act.

Clause 1.13 – Dictionary, new definition of convenor inserts the definition for ‘convenor’ following the amendments to section 74 of the Commonwealth Act.

SCHEDULE 2

Amendments consequential on the *Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008* (Cwlth)

Clause 2.1 – Section 50(1) is amended to reflect the new advertising scheme for unclassified films. Where it was previously an offence to advertise an unclassified film, it is now only an offence to advertise an unclassified film if the advertisement breaches the scheme settled in consultation with States and Territories.

Clause 2.2 – Section 50(2)(d) is omitted to reflect the new advertising scheme for unclassified computer games.

Clause 2.3 – New section 50(2A) creates an offence for advertising an unclassified computer game in breach of the advertising scheme. Where it was previously an offence to advertise an unclassified computer game, it is now only an offence to advertise an unclassified computer game if the advertisement breaches the scheme settled in consultation with States and Territories.

Clause 2.4 – New section 50(5) provides for transitional arrangements in the Commonwealth regulations.

Clause 2.5 - New section 51(1A) creates a new offence where an advertisement for an unclassified film is screened in a public place in breach of the advertising scheme.

Clause 2.6 – New section 53(1A) creates a new offence where a classified film is sold and it is accompanied by an advertisement for an unclassified film, and the advertisement does not comply with the advertising scheme. This addresses the scenario where a film that has been classified is sold on a device such as a DVD and there are advertisements for unclassified films contained on the same DVD.

Clause 2.7 – New section 53A(1A) creates a new offence where a classified computer game is sold or demonstrated in a public place and is accompanied by an advertisement for an unclassified computer game that does not comply with the advertising scheme. This addresses the situation where a computer game contained on one disc, for example, and the same disc contains an advertisement for another computer game that has not been classified.

Clause 2.8 Dictionary, new definition of advertising scheme inserts the definition of advertising scheme. The scheme will be determined under the Commonwealth Act, through consultation with the States and Territories.