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Bills Digest  
No. 115 2003–04

## Classification (Publications, Films and Computer Games) Amendment Bill 2004

ISSN 1328-8091

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Published by the Information and Research Services, Parliamentary Library,  
Department of Parliamentary Services, 2004.

I N F O R M A T I O N   A N D   R E S E A R C H   S E R V I C E S

Bills Digest  
No. 115 2003–04

Classification (Publications, Films and Computer Games)  
Amendment Bill 2004

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26 March 2004

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# Classification (Publications, Films and Computer Games) Amendment Bill 2004

**Date Introduced:** 24 March 2004

**House:** House of Representatives

**Portfolio:** Attorney-General

**Commencement:** Sections 1–3 commence on the day on which the Act receives Royal Assent. Schedules 1 and 2 commence on a single day to be fixed by Proclamation or 366 days after the Act receives Royal Assent, whichever occurs first.

## Purpose

The Bill amends the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act) and the *Broadcasting Services Act 1992* (the Broadcasting Act). The Bill is designed to improve ‘the operation of the classification scheme through a number of procedural amendments’. Such procedural amendments include the introduction of common classification types for films and computer games. Primarily, the Bill seeks to change the names of classification types for computer games to those already used for films. The changes ‘do not affect the type of material that is permitted within each classification’.<sup>1</sup> Some of the changes are simply cosmetic; for example, they remove unnecessary punctuation from the current Act.

The Bill creates ‘a more effective distinction’ between advisory classification types (G, PG and M) and those to which legally enforceable restrictions apply (MA 15+, R 18+ and X 18+). Reference to age is only used for restricted classification types.<sup>2</sup>

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## Background

The Classification Act and the Broadcasting Act are the two main pieces of Commonwealth legislation governing the law of classification.

### Classification Act

The Classification Act provides for the ‘classification of publications, films and computer games for the Australian Capital Territory’ and is intended to form ‘part of a Commonwealth/State/Territory scheme for the classification of publications, films and computer games and for the enforcement of those classifications’ (**section 3**). Definitions are set out in **section 5**. Classifications are set out in **section 7**. The states have passed legislation in similar terms. The scheme commenced on 1 January 1996.

Annexed as a schedule to the Classification Act is the **National Classification Code**. The National Classification Code exists as a separate document apart from the Classification Act. It contains descriptions about the products which would fall within the classification types. For example, the Code sets out the level of depiction of sex and violence and other issues which would cause a film to be classified as G, PG, M etc. The criteria for classification are also contained in the *Guidelines for the Classification of Films and Computer Games*, which came into operation on 30 March 2003. The Guidelines were made under section 12 of the Classification Act and are available electronically at: <http://www.oflc.gov.au/resource.html?resource=62&filename=62.pdf>.

The Classification Act also establishes the Classification Board and the Classification Review Board, setting out the membership and powers of each entity. These boards classify films, publications and computer games. The Office of Film and Literature Classification administers the system of classifications and provides other logistical support to the two boards.

### Broadcasting Act

**Part 9** of the Broadcasting Act deals with program standards for broadcasting, primarily for commercial television.

**Subsection 123(2)** permits radio and/or television industry groups to develop codes of practice relating to broadcasting standards. **Subsection 123(3)** provides that in developing codes of practice, the industry must take into account community attitudes to issues such as violence, sex, offensive language, drugs (including alcohol and tobacco) and depiction of gender and ethnicity.

**Subsection 123(3A)** also provides that the industry must have regard to the film classification system administered by the Office of Film and Literature Classification. It

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sets out when industry groups holding commercial television broadcasting licences may broadcast films classified ‘M’ and ‘MA’.

### **Basis of policy commitment**

The Bill seems to give effect to the agreement by Commonwealth, State and Territory Censorship Ministers to change classification laws ‘to better inform the community about strong material in films and computer games’. The Ministers also agreed ‘to the introduction of consistent classification categories for films and computer games’.<sup>3</sup>

### **Position of significant interest groups/press commentary**

There has been no press commentary on the Bill.

### **ALP/Australian Democrat/Greens policy position/commitments (if any)**

There is no reference on the websites of the ALP or the Australian Democrats to the issue of classification or the Bill itself. According to its policy on information technology, the Greens support ‘the imposition of a rating and censorship system (similar to film) for computer games and related leisure services’.<sup>4</sup> As the Bill is designed to give effect to an agreement reached by Commonwealth, State and Territory Censorship Ministers (of various political persuasion), it may be reasonable to assume that no party will regard the Bill as being particularly contentious.

## **Main Provisions**

**Clauses 1 and 2** contain the short title and commencement details for the proposed Act.

### **Schedule 1**

**Schedule 1** contains proposed amendments to the Classification Act.

**Item 1** of Schedule 1 amends the definition of ‘Code’ in section 5 to provide a more precise definition of the term.

**Item 2** amends paragraph (b) of the definition of ‘contentious material’ in section 5 to give effect to the proposed change of name for the classification of computer games from ‘M (15+)’ to ‘M’. (As films and computer games are to be classified using the same name, it would have been possible to simplify the form of the definition further). Likewise, **item 4** repeals paragraphs 5B(3)(c) to (e) and replaces them with **proposed paragraphs 5B(3)(c) and (d)** to give effect to the change of name for the classification of computer games.

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**Item 3** seeks to make a cosmetic change to the form (but not the content) of the definition of ‘film’.

**Item 5** amends subsection 7(1) to remove the brackets from around the words ‘Refused Classification’.

**Item 6** amends subsections 7(2) and (3). In subsection 7(2), it removes the brackets from around the descriptions of the various classification types (e.g. ‘General’) and renames the types ‘MA’, ‘R’ and ‘X’ as ‘MA 15+’, ‘R 18+’ and ‘X 18+’ respectively. It also amends subsection 7(3) by renaming the classification types for computer games as follows:

Current name of classification type	Proposed name of classification type
G (General)	<b>G</b> General
G (8+) (General)	<b>PG</b> Parental Guidance
M (15+) (Mature)	<b>M</b> Mature
MA (15+) (Mature Restricted)	<b>MA 15+</b> Mature Accompanied

Further, **item 6** adds ‘**RC** Refused Classification’ to the classification types for computer games. It also, by **proposed subsection 7(4)**, explains that ‘text that is not in bold is included by way of explanation and does not form part of the classification’.

**Items 7–14** replaces references to the current names of classification types with the proposed, revised names. In part, some of the drafting could have been tighter (for example, **item 10** could have repealed subparagraphs 28A(2)(c)(v) and (vi) and replaced them with one provision).

**Item 15** repeals the Schedule to the Classification Act. Currently the Schedule contains the National Classification Code. As mentioned earlier, the National Classification Code exists as a separate document apart from the Classification Act. According to the Explanatory Memorandum to the Bill, repealing the Schedule ‘will avoid confusion that may occur through reference being made to the out-of-date version of the Code that was contained in the Schedule’.<sup>5</sup> Consequential amendments will be made to the National Classification Code and will be tabled in both houses of parliament.<sup>6</sup>

**Item 16** provides that the amendments apply ‘to the doing of things at or after the commencement’ of Schedule 1.

**Item 17** converts the classification types currently existing for films into the proposed, renamed classification types. For example, following the passage of the Bill, a film which is currently classified as ‘MA’ will be taken to have (and to have always had) the renamed

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classification type ‘MA 15+’. Likewise, **item 18** converts the classification types currently existing for computer games into the proposed, renamed classification types. For example, a computer game which is currently classified as ‘G 8+’ will be taken to have (and to have always had) the classification type ‘PG’.

**Item 19** provides that the amendments do not affect the validity of any application made under the current provisions of the Classification Act.

**Item 20** provides that following the commencement of Schedule 1, the Director of the Classification Board may determine (under section 8 of the Classification Act) markings for types of classifications which exist under the current Classification Act and the manner in which the markings are to be displayed. The marking for a renamed classification and the manner in which it is to be displayed can be the same as for a current classification. As noted in the Explanatory Memorandum to the Bill, the determination may relate to ‘the size, location and duration of symbols, classification descriptors and consumer advice on classified products and related advertising’.<sup>7</sup>

**Item 21** provides that if the Director is required to give a copy of a classification certificate under section 27 (applications for information) or a notice under section 26 (notice of decision), the Director must give a copy of the document, notwithstanding that it refers to a classification type which may cease to exist. Likewise, if the Director is required to give a certificate under section 87 (evidentiary certificates) about action taken or not taken under the Classification Act, and the certificate must refer to a classification type, the Director must refer in the certificate to the classification type despite the type no longer being set out in section 7 of the Classification Act.

## **Schedule 2**

**Schedule 2** contains proposed amendments to the Broadcasting Act.

**Items 1–29** of Schedule 2 make changes to the Broadcasting Act to give effect to the renaming of classification types in the Classification Act.

**Item 30** provides that the amendments made by Schedule 2 ‘apply to the doing of things at or after the commencement’ of Schedule 2.

**Item 31** provides that if a film, program, Internet content (not a computer game) or datacasting content (not an interactive computer game) has been classified as ‘MA’, ‘R’ or ‘X’ prior to the commencement of Schedule 2, then the product is taken to have, and to have always had, the classification type ‘MA 15+’, ‘R 18+’ or ‘X 18+’ (as appropriate). The revision gives effect to the renamed classification types contained in Schedule 1 to the Bill.

**Item 32** provides that if Internet content consisting of a computer game or datacasting content consisting of an interactive computer game has been classified as ‘G (8+)’,

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'M (15+)' or 'MA (15+)' prior to the commencement of Schedule 2, then the product is taken to have, and to have always had, the classification type 'PG', 'M' or 'MA 15+' (as appropriate).

## Concluding Comments

It will be useful to the public for films and computer games to be classified by common descriptors. It will make identification and comparison of products easier. The Office of Film and Literature Classification is to carry out a national, public awareness campaign to draw attention to the revised classification types.<sup>8</sup> Notably, the Bill does not deal with publications, but they are not classified as rigidly as films and computer games.

The Bill does not affect the **Commercial Television Industry Code of Practice**. The code of practice deals with issues set out in **section 123** of the Broadcasting Act, including classification. Commercial Television Australia (CTVA) is currently conducting a review of the code of practice, including the times when material of certain classifications can be screened.<sup>9</sup> It is reasonable to assume that the revision will now, among other things, adopt the renamed classification types where appropriate.

Finally, the Bill does not affect the importation of publications, films or computer games. Imported products remain subject to classification prior to release in Australia. Following the commencement of Schedule 1 of the Bill, imported items will be subject to the renamed classification types prior to release in Australia (if not already classified).

## Endnotes

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- 1 Explanatory Memorandum to the Bill, p. 1.
  - 2 Mr Ruddock, Attorney-General, 'Second Reading Speech: Classification (Publications, Films and Computer Games) Amendment Bill 2004', House of Representatives, *Debates*, 24 March 2004, p. 26 042.
  - 3 'Film and Computer Games Symbol to change from MA15+ to A15+ Accompanied', Communique issued by State, Territory and Commonwealth Censorship Ministers, 13 November 2003 at: <http://www.oflc.gov.au/resource.html?resource=269&filename=269.pdf> (at 24 March 2004).
  - 4 'Services', paragraph 5.3, at: <http://www.greens.org.au> (at 24 March 2004).
  - 5 Explanatory Memorandum to the Bill, p. 7.

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- 6 Mr Ruddock, Attorney-General, 'Second Reading Speech: Classification (Publications, Films and Computer Games) Amendment Bill 2004', House of Representatives, *Debates*, 24 March 2004, p. 26 043.
- 7 Mr Ruddock, Attorney-General, 'Second Reading Speech: Classification (Publications, Films and Computer Games) Amendment Bill 2004', House of Representatives, *Debates*, 24 March 2004, p. 26 042.
- 8 *ibid.*
- 9 <http://www.ctva.com.au/control.cfm?page=codereview&pageID=171&menucat=1.2.110.171&Level=3>  
(at 24 March 2004)

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