



Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008

No. 69, 2008

**An Act to amend the *Classification (Publications,
Films and Computer Games) Act 1995*, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the *Classification (Publications,
Films and Computer Games) Act 1995*, and for
related purposes**

[Assented to 1 July 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Classification (Publications, Films
and Computer Games) Amendment (Assessments and Advertising)
Act 2008*.

*Classification (Publications, Films and Computer Games) Amendment (Assessments and
Advertising) Act 2008 No. 69, 2008 1*

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	1 July 2008
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 July 2009
3. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 January 2009

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to advertising

Classification (Publications, Films and Computer Games) Act 1995

1 Section 5 (paragraph (c) of the definition of *advertisement*)

Repeal the paragraph, substitute:

- (c) advertising on the Internet;

2 Section 5 (at the end of the definition of *advertisement*)

Add:

- ; or (g) advertising by means of a product:
 - (i) that refers to or is derived from the publication, film or computer game; and
 - (ii) that is primarily intended to be sold or distributed to the general public or to a section of the general public; and
 - (iii) that a reasonable person would not consider to be a primary source of classification information for consumers about the publication, film or computer game.

3 Section 5 (paragraph (d) of the definition of *decision*)

Repeal the paragraph, substitute:

- (d) to assess or refuse to assess the likely classification of an unclassified film or an unclassified computer game; or
- (da) to revoke an assessment of the likely classification of an unclassified film or an unclassified computer game; or

4 Paragraph 5B(3)(b)

Repeal the paragraph, substitute:

- (b) an advertisement for an unclassified film or an unclassified computer game:
 - (i) that has been assessed in accordance with section 31 or under section 33 as being likely to be classified M or a higher classification; or

- (ii) the likely classification of which has not been assessed in accordance with section 31 or under section 33; or

5 Subsection 22(1)

Repeal the subsection, substitute:

- (1) An unclassified film (the *first film*) or unclassified computer game (the *first game*) must not be classified if it contains an advertisement:
 - (a) for a film or computer game with a higher classification than the classification the first film or first game would be given if it did not contain the advertisement; or
 - (b) for an unclassified film or unclassified computer game:
 - (i) that has been assessed in accordance with section 31 or under section 33 as being likely to have a higher classification than the classification the first film or first game would be given if it did not contain the advertisement; or
 - (ii) the likely classification of which has not been assessed in accordance with section 31 or under section 33; or
 - (c) that has been refused approval.

6 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Advertising

7 Subsections 29(6) and (7)

Repeal the subsections, substitute:

- (6) The Board must refuse to approve an advertisement for:
 - (a) a film or computer game that has been classified RC; or
 - (b) an unclassified film or unclassified computer game that, if classified, would be likely to be classified RC.

8 Subsection 30(1)(b)

Omit “classified”.

9 Division 2 of Part 3

Repeal the Division, substitute:

Division 2—Advertising of unclassified films and unclassified computer games

Subdivision A—Scheme relating to advertising

31 Scheme for advertising may be determined by legislative instrument

- (1) The Minister may, by legislative instrument, determine a scheme for the advertising of unclassified films and unclassified computer games including, but not limited to, the following:
 - (a) specifying conditions on which unclassified films and unclassified computer games may be advertised;
 - (b) providing for requirements relating to self-assessment by industry of the likely classification of unclassified films and unclassified computer games.
- (2) The conditions on which unclassified films and unclassified computer games may be advertised include, but are not limited to, conditions in relation to the following:
 - (a) messages that must be displayed on or in relation to the advertising of an unclassified film or an unclassified computer game;
 - (b) the circumstances in which an unclassified film or an unclassified computer game may be advertised with a classified film or game (including circumstances relating to the likely classification of the film or computer game);
 - (c) the time within which messages on or in relation to an advertisement for an unclassified film or an unclassified computer game must be changed after the film or computer game is classified;
 - (d) a condition that an unclassified film or an unclassified computer game may not be advertised by a person in respect of whom a barring notice of a kind mentioned in paragraph (3)(d) is in force.
- (3) Without limiting subsection (1), the scheme may:

- (a) provide for the authorisation of persons to make assessments of the likely classifications of unclassified films or unclassified computer games; and
 - (b) specify the requirements for authorisation of a kind mentioned in paragraph (a), and for continued authorisation (including the circumstances in which such authorisation may be revoked or suspended); and
 - (c) specify the basis on which an authorised person may make, amend or revoke assessments of the likely classification of unclassified films or unclassified computer games; and
 - (d) provide for a notice system that empowers the Director to give a notice (a *barring notice*) to a particular person in specified circumstances (including circumstances that relate to whether the Director is satisfied as to a matter or matters); and
 - (e) specify the effect of a barring notice, which may include but is not limited to providing that a person in respect of whom a barring notice is in force may not be authorised to make assessments of the likely classifications of unclassified films or unclassified computer games; and
 - (f) provide for review by the Administrative Appeals Tribunal of decisions under the scheme; and
 - (g) confer functions and powers on the Board or the Director in relation to and for the purposes of the scheme; and
 - (h) provide for administrative matters, such as the making of applications and the giving of notices.
- (4) The scheme may specify the circumstances in which an unclassified film or an unclassified computer game may not be advertised.
- (5) The Minister must consult with participating Ministers before making a determination under subsection (1).
- (6) A determination under subsection (1) must not be such as to permit the advertisement of a film or computer game that, if the film or computer game were classified, would be likely to be classified RC or X 18+.

Subdivision B—Assessments of likely classifications of unclassified films and unclassified computer games

32 Person may apply for assessment of likely classification of unclassified film or unclassified computer game

- (1) A person who is, or proposes to be, the distributor, exhibitor or publisher of an unclassified film or an unclassified computer game may apply to the Board for an assessment of the likely classification of the film or computer game for the purpose of advertising the film or computer game.
- (2) The application must:
 - (a) be in writing; and
 - (b) be in a form approved in writing by the Director; and
 - (c) be signed by or on behalf of the applicant; and
 - (d) include any information, statements, explanations or other matters required by the form; and
 - (e) be accompanied by any other relevant material required by the form; and
 - (f) be accompanied by the prescribed fee.

33 Board may assess likely classification of film or computer game

- (1) This section applies if an application has been made under section 32 for the assessment of the likely classification of an unclassified film or an unclassified computer game.
 - (2) The Board may assess the classification that, in the opinion of the Board, the film or computer game would be likely to have if the film or computer game were classified, having regard to the material and information available to the Board when making the assessment.
 - (3) The Board may refuse to assess the likely classification of the film or computer game if the Board considers that the material and information available to the Board is insufficient (whether or not the Board has made a request under subsection (4)).
 - (4) The Board may request the applicant to give to the Board, within the period specified in the request, further information for the purpose of enabling the Board to deal with the application.
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- (5) The Board may decline to deal with the application, or decline to further deal with the application, until the information is given to the Board in accordance with the request.
- (6) To avoid doubt, this section does not require the Board to obtain further information under subsection (4) for the purposes of the Board's assessment.
- (7) An assessment made under subsection (2) is not a legislative instrument.

34 Revocation of assessments

- (1) If, after making an assessment under section 33 of the likely classification of an unclassified film or an unclassified computer game, but before the film or computer game is classified, the Board is of the opinion that:
 - (a) the film or computer game contains, or will contain, material of which the Board was unaware when the Board made the assessment; and
 - (b) if the Board had been aware of the material before making the assessment, it would have assessed the film or computer game as likely to have a higher classification;the Board must revoke the assessment, and must also revoke the approval of any approved advertisement for the film or game.
- (2) The Board must revoke an assessment under section 33 of the likely classification of a film or computer game, and must also revoke the approval of any approved advertisement for the film or game, if the applicant for the assessment makes a written request that the Board do so.
- (3) The revocation of an assessment or approved advertisement takes effect:
 - (a) when written notice of the decision to revoke is given under section 35 to the applicant concerned; or
 - (b) if a later day is specified in the instrument of revocation—on that later day.

35 Notice of decisions

The Board must give written notice of a decision under section 33 or 34 to the applicant for the assessment or advertisement concerned as soon as practicable but not later than 30 days after the making of the decision.

10 Paragraph 42(1)(b)

After “game concerned”, insert “, the applicant for assessment under section 33 of the likely classification of the unclassified film or unclassified computer game concerned,”.

11 Subsection 87A(1)(b)

Insert:

or (c) an application for an assessment of the likely classification of an unclassified film or an unclassified computer game;

12 Paragraph 97(c)

Repeal the paragraph.

13 Transitional regulations

- (1) The Governor-General may make regulations providing for matters of a transitional nature in relation to the advertising of unclassified films that have been granted a certificate of exemption.
- (2) In this item:
certificate of exemption means a certificate of exemption granted by the Board under section 33 of the *Classification (Publications, Films and Computer Games) Act 1995*, as in force before its repeal by item 9 of this Schedule.

Schedule 2—Amendments relating to films of television series

Classification (Publications, Films and Computer Games) Act 1995

1 Section 5

Insert:

authorised television series assessor means a person authorised in accordance with the scheme determined under section 14B to prepare assessments of television series films.

2 Section 5

Insert:

television series film means a film that comprises:

- (a) one or more episodes of a television series; or
- (b) one or more episodes of a television series and series-related material if that material does not appear to be self-contained and produced for viewing as a discrete entity.

3 Before section 15

Insert:

14B Applications for television series films

(1) If:

- (a) an application is made for classification of a film; and
- (b) the film is a television series film; and
- (c) at least one of the episodes of the television series film has, before the making of the application, been broadcast in Australia on a national broadcasting service, a commercial broadcasting service, a subscription broadcasting service or a community broadcasting service; and
- (d) the applicant is of the opinion that the film would, if classified, be classified at a particular classification that is R 18+ or a lower classification;

the applicant may also submit with the application an assessment of the television series film prepared in accordance with subsection (2).

- (2) An assessment of a kind referred to in subsection (1) must:
 - (a) satisfy the requirements specified in the scheme determined by the Minister under subsection (3); and
 - (b) be prepared by an authorised television series assessor; and
 - (c) be signed by, or on behalf of, the applicant.
- (3) The Minister may, by legislative instrument, determine a scheme relating to the assessment of television series films.
- (4) A scheme under subsection (3) may do the following:
 - (a) specify the requirements for the assessments of television series films;
 - (b) specify the basis on which assessments of television series films are to be made;
 - (c) specify the requirements for the authorisation of persons as authorised television series assessors under the scheme and for continued authorisation (including the circumstances in which such authorisation may be revoked or suspended);
 - (d) provide for a notice system that empowers the Director to give a notice (a **barring notice**) to a particular person in specified circumstances (including circumstances that relate to whether the Director is satisfied as to a matter or matters);
 - (e) specify the effect of a barring notice, which may include but is not limited to the following:
 - (i) providing that a person in respect of whom a barring notice is in force may not be authorised to make assessments of television series films;
 - (ii) providing that a person in respect of whom a barring notice is in force may not submit an application for classification under subsection (1);
 - (f) provide for review by the Administrative Appeals Tribunal of decisions under the scheme;
 - (g) confer functions and powers on the Board or the Director in relation to and for the purposes of the scheme;
 - (h) provide for administrative matters, such as the making of applications and the giving of notices;

- (i) specify circumstances in which an assessment is taken to be misleading, incorrect or grossly inadequate for the purposes of section 21AB (without limiting those circumstances).
- (5) The Minister must consult with participating Ministers before determining a scheme under subsection (3).
- (6) In this section:

commercial broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

community broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

national broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

subscription broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

4 After section 21AA

Insert:

21AB Revocation of classification of television series films

The Board must revoke the classification of a film that has been classified taking into account an assessment prepared by an authorised television series assessor under section 14B if the Board is satisfied that:

- (a) the assessment was misleading, incorrect or grossly inadequate; and
- (b) if the Board had been aware of the respects in which the assessment was misleading, incorrect or grossly inadequate before the classification was made, it would have given the film a different classification.

Note: The Minister's determination under section 14B may prescribe circumstances in which an assessment is taken to be misleading, incorrect or grossly inadequate.

5 Application of amendments

The amendments made by this Schedule apply to applications for classification of films made on or after the commencement of this Schedule.

*[Minister's second reading speech made in—
House of Representatives on 14 February 2008
Senate on 14 May 2008]*

(12/08)

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Advertising) Act 2008 No. 69, 2008 13*