

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 122

Issued by the Authority of the Minister for Home Affairs

*Classification (Publications, Films, and Computer Games) Amendment Regulations 2009
(No. 1)*

The *Classification (Publications, Films and Computer Games) Act 1995* (the Act) facilitates the operation of the intergovernmental co-operative legislative scheme for censorship in Australia. The Act provides for the classification of films, computer games and some publications.

Subsection 93(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under existing arrangements, only public exhibition films granted an exemption by the Classification Board can be advertised before they have been classified. The *Classification (Advertising for Unclassified Films) Instrument 2005* (the Unclassified Films Instrument) sets out conditions for advertising and matters related to the grant of exemptions by the Classification Board, including limiting the number of exemptions to 136 per calendar year.

The purpose of the proposed Regulations is to insert transitional provisions into the *Classification (Publications, Films and Computer Games) Regulations 2005* (the Principal Regulations) relating to the introduction of a new scheme to permit a broader range of unclassified films and computer games, other than those likely to be classified X 18+ or RC – Refused Classification, to be advertised, subject to conditions set out in a new legislative instrument.

The new scheme provides a consistent approach to advertising unclassified films and computer games and improves the quality of information provided to consumers.

The new scheme is effected by amendments to the Act inserted by the Amendment Act, a new *Classification (Advertising of Unclassified Films and Computer Games Scheme) Determination 2009* (the Advertising Determination), consequential amendments to the *Classification (Markings for Films and Computer Games) Determination 2007* and amendments to State and Territory classification enforcement legislation.

The new scheme limits advertising that can be placed together with classified films or computer games, such as trailers shown in cinemas or on DVDs. In this case, advertisements for unclassified material is only allowed where the likely rating of the unclassified material is the same or lower than the classified work. The new scheme ensures that consumers are not exposed to advertisements for higher level material when they have chosen to view or play content classified at a particular level.

The Regulations permit advertising for a film granted a certificate of exemption before 1 July 2009 to continue to comply with the Unclassified Films Instrument (the current arrangements), or to comply with the new Advertising Determination. The Unclassified

Films Instrument is repealed by clause 3 of the Advertising Determination with effect from 1 July 2009. The Advertising Determination also introduces a new advertising message, 'Check the Classification' (CTC), which replaces the old message, 'This film has advertising approval. Check the classification closer to the release date' (TBC), under the Unclassified Films Instrument.

The Regulations allow such advertising to continue to display the advertising message in accordance with the Unclassified Films Instrument, ensuring that advertisers do not have to undertake potentially expensive updates to existing advertising.

Details of the Regulations are included in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 July 2009, which is the day the amendments to the Act and the determinations are due to commence.

The Classification Board, State and Territory officials and peak industry bodies were consulted throughout the development of the new scheme and on the various instruments, including these Regulations. The Minister for Home Affairs has consulted State and Territory Censorship Ministers before making the determinations, as required by the Act.

ATTACHMENT

Regulation 1 - Name of Regulations

Regulation 1 provides that the name of the Regulations is the *Classification (Publications, Films and Computer Games) Amendment Regulations 2009 (No. 1)*.

Regulation 2 – Commencement

Regulation 2 provides that these Regulations commence on 1 July 2009.

Regulation 3 – Amendment of *Classification (Publications, Films and Computer Games) Regulations*

Regulation 3 provides that Schedule 1 amends the Principal Regulations.

Schedule 1 – Amendment

Item [1]

This item inserts a new regulation 22 into the Principal Regulations.

Subregulation 22(1) is a definitions provision.

Subregulation 22(2) provides that on or after 1 July 2009, a film that has been granted a certificate of exemption may be advertised in accordance with either the Unclassified Films Instrument or the Advertising Determination. Certificates of exemption are granted by the Classification Board under section 33 of the Act, which is repealed by the Amendment Act.

This means that a distributor of a film who has been relying on an exemption may, on 1 July 2009 (if the film is still unclassified), choose either to continue relying on the rules in the Unclassified Films Instrument to advertise the film, or change the advertising to comply with the rules in the new scheme. This amendment means that industry will not have to bear the expense and inconvenience of changing existing advertising to show the new advertising message while ensuring that consumers continue to receive an appropriate message on advertisements for these unclassified films.