

EXPLANATORY STATEMENT

Classification (R 18+ Computer Games) Amendment Determination 2012 (No. 1)

Issued by the Authority of the Minister for Justice

The *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act) facilitates classification in Australia by providing for the classification of publications, films and computer games. The Act is intended to form part of a Commonwealth, State and Territory cooperative scheme for classification.

Authority for making the instrument

Section 8 of the Classification Act provides that the Minister may, by legislative instrument, determine markings for each type of classification, giving information about the classification and the manner in which the markings are to be displayed.

Section 31 of the Classification Act provides that the Minister may, by legislative instrument, determine a scheme for the advertising of unclassified films and unclassified computer games.

Issues giving rise to the need for the instrument

The current classification categories available for computer games under the Classification Act consist of G (General), PG (Parental Guidance), M (Mature), MA 15+ (Mature Accompanied) and RC (Refused Classification). There is no R 18+ category for computer games that is legally restricted to adults.

The passing by Parliament of the *Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Bill 2012* (the R 18+ Bill) will amend the Classification Act to introduce an R 18+ (Restricted) category for computer games. The R 18+ Bill commences on 1 January 2013.

Purpose of the instrument

The *Classification (R 18+ Computer Games) Amendment Determination 2012 (No. 1)* is a consequential amendment necessitated by the passing of the R 18+ Bill.

This Instrument will amend the *Classification (Advertising of Unclassified Films and Computer Games Scheme) Determination 2009* (the Advertising Scheme Determination) and the *Classification (Markings for Films and Computer Games) Determination 2007* (the Markings Determination) to support the introduction of the R 18+ classification for computer games under the Classification Act.

Schedule 1 – Amendments to the *Classification (Advertising of Unclassified Films and Computer Games Scheme) Determination 2009*

Currently, the scheme set out in the Advertising Scheme Determination applies to unclassified films and computer games likely to be classified G, PG, M, or MA 15+ and for unclassified films likely to be classified R 18+.

This Instrument amends the Advertising of Unclassified Films and Computer Games Scheme (the Scheme) to apply to unclassified films and computer games likely to be classified G, PG, M, MA 15+, or R 18+.

This Instrument amends the definition of an unclassified computer game to mean “... a game likely to be classified G, PG, M, MA 15+ or R 18+.” This means that unclassified computer games likely to be classified R 18+ are eligible for the Scheme.

This Instrument removes “(for films only)” from the table at Clause 2.9. This aligns the advertising requirements for films and computer games, meaning that unclassified films or computer games assessed as being likely to be classified R 18+, MA 15+, M, PG or G may be advertised with films or computer games classified R 18+.

Schedule 2 – Amendments to the *Classification (Markings for Films and Computer Games) Determination 2007*

The amendment to the Markings Determination provides a classification marking for computer games classified R 18+.

Specifically, the reference “for a film” in para 24(2)(b) is replaced by “for a film or computer game”. This amendment aligns the classification markings requirements for films and computer games classified R 18+ under the Classification Act.

Commencement arrangements

The *Classification (R 18+ Computer Games) Amendment Determination 2012 (No. 1)* will commence on 1 January 2013. This is the day on which the R 18+ classification category for computer games will commence under the Classification Act.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). In accordance with subsections 44(1) and 54(1) of the LIA, it is not subject to disallowance or sunseting because the Classification Act facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more of the States, and authorises the instrument to be made by the Minister.

The Hon Jason Clare MP

Minister for Justice

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Classification (R 18+ Computer Games) Amendment Determination 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Bill 2012 (the R 18+ Bill) creates a new R 18+ adult category for computer games under the *Classification (Publications, Films and Computer Games) Act 1995* (the Act). The R 18+ Bill was passed by Parliament on 6 July 2012 and will commence on 1 January 2013.

A Statement of Compatibility was prepared for the R 18+ Bill. The Bill was found to engage the human right of freedom of expression. It was concluded that the R 18+ Bill advances the protection of human rights and to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate.

Amendments to the *Classification (Markings for Films and Computer Games) Determination 2007* (the Markings Determination) and the *Classification (Advertising of Unclassified Films and Computer Games Scheme) Determination 2009* (the Advertising Scheme Determination) are required to support the introduction of the R 18+ computer game classification. The consequential changes to the Markings Determination and Advertising Scheme Determination are made by the *Classification (R 18+ Computer Games) Amendment Determination 2012 (No. 1)*. None of the amendments make any substantive changes to the law.

Classification (Markings for Films and Computer Games) Determination 2007

Currently, the Markings Determination only provides markings for computer games classified G (General), PG (Parental Guidance), M (Mature) and MA 15+ (Mature Accompanied).

This Instrument amends the Markings Determination to provide markings for computer games classified R 18+ (Restricted).

Classification (Advertising of Unclassified Films and Computer Games Scheme) Determination 2009

Currently, the Advertising Scheme Determination applies to unclassified films and computer games likely to be classified G, PG, M, or MA 15+ and for unclassified films likely to be classified R 18+.

This Instrument amends the definition of an unclassified computer game under the Advertising Scheme Determination. An unclassified computer game now means "... a computer game likely to be classified G, PG, M, MA 15+ or R 18+". This means unclassified films or computer games assessed as being likely to be classified R 18+, MA 15+, M, PG or G may be advertised with films or computer games classified R 18+.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.