

EXPLANATORY STATEMENT

National Classification Code Amendment Notice 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 Classification Act is intended to form part of a Commonwealth, State and Territory cooperative scheme for classification.

Authority for making the instrument

Under s 6 of the Classification Act, if the Minister and each participating Minister agree to an amendment of the *National Classification Code* (the Code), the Code is taken to be amended accordingly.

Issues giving rise to the need for the instrument

The Code names and broadly describes the classification categories. The current classification categories available for computer games under the Classification Act, and described in the Code, consist of G (General), PG (Parental Guidance), M (Mature), MA 15+ (Mature Accompanied) and RC (Refused Classification). There is no R 18+ (Restricted) category for computer games, although there are adult classifications for publications and films.

The *Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Act 2012* (the Amending Act) will introduce an R 18+ (Restricted) category for computer games. The R 18+ category is legally restricted to adults. The amended Classification Act commences on 1 January 2013.

Amendment of the Code is necessitated by, and consequential to, the amendments to the Classification Act made by the Amending Act.

Extensive public consultation on the introduction of an R 18+ category has been conducted over the past two years. Agreement to this instrument was reached between each State and Territory Minister responsible for Classification following the July 2011 meeting of the Standing Committee of Attorneys-General.

The amendments in this instrument have no financial implications.

Purpose of the instrument

The amendments to the Code support the introduction of an R 18+ category for computer games. In line with the requirements of the Classification Act, each participating Minister must agree to these amendments.

This Instrument will amend the Code to insert an R 18+ classification category for computer games and a broad description of the category that mirrors the Code description of the R 18+ classification category for films.

The Instrument also updates the principles that classification decisions must give effect to by recognising that adults should be able to ‘play’ what they want.

Schedule 1 – Amendments to the *National Classification Code*

This instrument inserts ‘and play’ in paragraph 1 (a) of the Code, to reflect the introduction of an adult-only category for computer games.

The instrument also makes several amendments to table 4 to be consistent with the descriptions in table 3 of the Code concerning films.

Item 1 (d) is deleted, removing the prohibition on computer games which are unsuitable for a minor to see or play. A description of the R 18+ category is inserted at item 2. Item 3 describes the MA 15+ category and inserts a reference to the R 18+ category. Item 4 describes the M category and inserts a reference to the R 18+ category. Item 5 describes the PG category and inserts a reference to the R 18+ category.

Commencement arrangements

The amended *National Classification Code* 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 as agreed by participating Ministers

The Code 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, they are 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

National Classification Code

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

While adult classification categories exist for films and publications, there is currently no adult category for computer games. Any computer game that is unsuitable for a minor to see or play must be classified RC (Refused Classification). Under state and territory law, it is illegal to sell or distribute RC content.

The *Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Act 2012* (the Amending Act) will amend the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act) to introduce an R 18+ (Restricted) category for computer games. The R 18+ category is legally restricted to adults. The amended Classification Act commences on 1 January 2013.

The amended Act supports the principles in the *National Classification Code* that adults should be able to read, hear and see what they want, while minors should be protected from material that may harm or disturb them.

A Statement of Compatibility was prepared for the R 18+ Bill. The Bill was found to engage the human right of freedom of expression in Article 19 of the International Covenant on Civil and Political Rights. Article 19 encompasses the freedom to seek, receive and impart information and ideas. The right to freedom of expression extends to any medium, including written and oral communications, the media, public protest, broadcasting, artistic works and commercial advertising.

The right to freedom of expression carries with it special responsibilities, and may be restricted on several grounds including the classification of material, where this is necessary to protect public health and morals, or the rights of others, including protecting children and young people against harm caused by age-inappropriate material

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. On 18 June 2012 the Bill was passed in Parliament.

Amendments to the *National Classification Code* (the Code) are consequential to the amendments to the Classification Act made by the Amending Act. The amending of the Classification Act is the key change to the law. This instrument does not make any substantive change to the law.

The classification categories are established under s 7 of the Act. The Code broadly describes the categories. This Instrument supports the introduction of the R 18+ category for computer games by amending the Code to insert a description of the new R 18+ category for computer

games created by the amending Act. The description of the R 18+ category for computer games mirrors that for films in the existing Code.

In accordance with s 12 of the Act, each Minister with responsibility for classification from the Commonwealth, States and Territories has agreed the amendments to the Code.

Human rights implications

This Legislative Instrument engages human rights to the extent that it supports the amendments to the Classification Act which introduce the R 18+ category for computer games. As noted above, the instrument itself does not make any substantive change to the law.

Conclusion

This Legislative Instrument is compatible with human rights.