

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Communications

*Classification (Publications, Films and Computer Games) Act 1995*

### ***Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification) Regulations 2024***

#### **Authority**

This instrument is made under subsection 93(1) of the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act), which provides that the Governor-General may make regulations prescribing matters: required or permitted by this Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

It amends the *Classification (Publications, Films and Computer Games) Regulations 2005* (the Regulations) to support the operation of amendments to the Classification Act contained in the *Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification and Other Measures) Act 2023* (the Classification Amendment Act), which will commence on 15 March 2024.

This instrument is made in advance of commencement in reliance on section 4 of the *Acts Interpretation Act 1901*, noting that the Classification Amendment Act received Royal Assent on 14 September 2023.

#### **Purpose and operation**

The purpose of this instrument is to prescribe the circumstances in which consumer advice (the content warning that accompanies a classification rating) can be taken to be “misleading, incorrect or grossly inadequate,” and therefore provide grounds for the Classification Board (the Board) to revoke that classification decision. The Board’s revocation powers with respect to decisions of approved classification tools and accredited persons are contained in sections 22CH and 22L of the Classification Act.

The changes are intended to support a more objective set of criteria for revocation on the basis of different consumer advices, particularly in circumstances where these differences have no material impact on the usefulness of advice to consumers. This would include, for example, where the classification rating (such as PG or MA15+) is unchanged but the order, syntax or style of consumer advice is different (such as ‘mild violence, mild coarse language’ as opposed to ‘mild violence and coarse language’).

This will improve the efficiency of the National Classification Scheme by refining the circumstances where the Board may revoke a classification, and encourage the uptake of industry self-classification by providing clarity to classification tool administrators and accredited classifiers around the permissible use of consumer advice in classification decisions.

The Board was previously empowered to conduct checks on classification decisions made by approved classification tools, and to revoke and replace these decisions where it would have determined a different classification (rating) or consumer advice (content warning).

Amendments to the Classification Act commencing on 15 March 2024 refine the criteria for the Board to revoke classification decisions on the basis of differences in consumer advice.

Section 12A of the Classification Act establishes that the Board may issue a legislative instrument containing a list of approved words and phrases to use in consumer advice, along with guidance on how they should be used.

Under subparagraphs 22CH(1)(b)(iii) and 22L(1)(b)(iii) of the Classification Act, the Board may revoke a decision by an approved tool or accredited person if the consumer advice for the relevant material uses a term that is not included in the list determined by the Board under section 12A, provided that the list was in force at the time of classification.

Subparagraphs 22CH(1)(b)(ii) and 22L(1)(b)(ii) establish that the Board may also revoke a decision by an approved tool or accredited person if consumer advice for the relevant material is misleading, incorrect or grossly inadequate. A note in the Classification Act, with reference to paragraph 93(2)(c), provides that regulations may prescribe circumstances in which consumer advice is taken to be misleading, incorrect or grossly inadequate.

This instrument amends the Regulations by inserting a new regulation 21A, which provides that consumer advice is taken to be misleading, incorrect or grossly inadequate if it does not include a classifiable element, such as violence or nudity, that is in the relevant material, and that is at the same impact level as the classification for the relevant material. This is consistent with the Board's established practice of formulating consumer advice to include the most impactful content in a film or computer game. For example, if a film contains violence that has been classified at the PG level (mild), coarse language at the MA 15+ level (strong) and no other classifiable elements are present, it will be classified MA 15+ with consumer advice of 'strong coarse language'.

Consumer advice is also taken to be misleading, incorrect or grossly inadequate if it incorrectly includes a classifiable element that is not in the relevant material.

Details of the instrument are set out in [Attachment A](#).

### **Consultation**

Consultation on proposed refinement of revocation criteria has occurred with the Board and with industry, in particular administrators of approved classification tools. No public consultation was conducted due to the technical nature of the proposed amendment.

### **Impact analysis**

The Office of Impact Analysis was consulted in the development of the Classification Amendment Act, which this instrument supports, and assessed the proposal as having no more than minor regulatory impacts (OBPR22-03305).

### **Commencement arrangements**

This instrument will commence on the later of the start of the day after it is registered, and at the same time as the commencement of the Classification Amendment Act on 15 March 2024.

### **Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at [Attachment B](#).

**Details of the *Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification) Regulations 2024***

Section 1 – Name

This section provides that the name of the instrument is the *Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification) Regulations 2024*.

Section 2 – Commencement

This section provides for the instrument to commence on the later of:

- (a) the start of the day after this instrument is registered; and
- (b) the same time as the *Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification and Other Measures) Act 2023* commences.

Section 3 – Authority

This section provides that the instrument is made under the *Classification (Publications, Films and Computer Games) Act 1995*.

Section 4 – Schedules

This section provides that each instrument specified in the Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

Item 1 inserts new regulation 21A after regulation 21. Regulation 21A is titled ‘When consumer advice is taken to be misleading, incorrect or grossly inadequate’. It provides that consumer advice in relation to a publication, film or computer game is taken to be misleading, incorrect or grossly inadequate if it does not include a classifiable element, such as violence or nudity, that is in the relevant material, and is at the same corresponding level as the classification rating for the relevant material, such as mild (PG), moderate (M) or strong (MA15+). Consumer advice is also taken to be misleading if it incorrectly includes a classifiable element that is not in the relevant material.

## Statement of Compatibility with Human Rights

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

### ***Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification) Regulations 2024***

#### ***Overview***

The instrument amends the *Classification (Publications, Films and Computer Games) Regulations 2005* (the Regulations) to prescribe circumstances in which consumer advice can be taken to be “misleading, incorrect or grossly inadequate”, to support refinements to the Classification Board’s (the Board’s) quality assurance (revocation) powers for industry self-classification decisions under amendments to the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act), which commences on 15 March 2024.

The amendment to the Regulations has been assessed as compatible with Australia’s human rights obligations. Specific articles and the manner in which this instrument engages them are presented below.

- *The promotion of the best interests of the child under Article 3 of the Convention on the Rights of the Child (CRC)*
- *The requirement for States to render appropriate assistance to parents or legal guardians in the performance of their child rearing responsibilities in Article 18(2) of the CRC*
- *The need for States to protect children from all forms of sexual exploitation and sexual abuse, including pornographic performances and materials under Article 34(c) of the CRC*

All of the above articles are directly or indirectly supported through this instrument. In providing further clarification of criteria to be used by the Classification Board for the revocation of decisions, it will encourage uptake of options for self-classification by industry. Uptake of either approved tools or accreditation to classify content will have the effect of making it easier for publishers of classifiable content under the Classification Act, particularly online content, to comply with the requirement under the National Classification Scheme (the Scheme) to ensure content is classified before it is made available to the Australian public.

The Scheme provides a trusted and reliable source of information to inform the choices of consumers about what they, and those in their care, read, hear, see and play. It is founded on the principles of protecting children from material that may harm or disturb them while preserving the right of adults to access media content of their choice with limited exception.

Further clarification of revocation criteria via this instrument will also help to promote the provision of consistent classification information to consumers and is a way in which the Government can realise its obligations under the CRC by assisting parents and legal guardians to make informed decisions regarding appropriate entertainment material for their children.

The amendment also supports classification decisions that inform consumers, including children, in their media choices. The refined, clearer revocation criteria (combined with the

provision for the Board to issue a list of consumer advice terms and guidance for classifiers) will more effectively facilitate the provision of consistent consumer information.

- *Freedom of expression in Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR)*
- *The right of everyone to take part in cultural life in Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)*
- *The right to enjoy and benefit from culture in Article 27 of the ICCPR*
- *The right of the child to access information and material from a diversity of national and international sources in Article 17 of the CRC.*

In providing further clarification of criteria to be used by the Classification Board for revocation of decisions, the instrument will encourage uptake of options for self-classification by industry, which will in turn make compliance with classification requirements more cost effective, removing an impediment to freedom of expression.

Expanding industry self-classification will support the right of everyone to take part in cultural life, in that it will provide a more cost-effective means for a broader range of content providers to meet classification obligations and legally make their content available to Australians.

- *Existing limitations on the right to freedom of expression in Article 19(2) of the ICCPR*

Encouraging the classification of content through industry self-classification, supported by powers for the Classification Board to quality assure self-classification decisions (and revoke where necessary), will place a necessary limit on the right to freedom of expression. It upholds the role of the Scheme in preserving freedom of expression as long as content is appropriately classified, and certain content is able to be restricted or Refused Classification in order to protect children from harmful content and consumers more broadly from objectionable, abhorrent or illegal content. Increasing the volume of content that is classified in accordance with the Scheme better protects consumers from exposure to unsolicited material that they may find offensive and contributes to the protection of public morals.