

South Australia

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

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

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Classification (Publications, Films and Computer Games) Act 1995*

4—Amendment of section 4—Interpretation

- (1) Section 4—after the definition of *acceptable proof of age* insert:

additional content in a film that also comprises a classified film or an exempt film includes, but is not limited to—

- (a) additional scenes for the classified film or exempt film (such as alternative endings or deleted scenes); and
- (b) a film of the making of the classified film or exempt film; and
- (c) interviews with, and commentaries by, directors, actors and other persons involved with the making of the classified film or exempt film; and
- (d) such other material as is prescribed by the regulations,

but does not include—

- (e) a work; or

- (f) such other material as is prescribed by the regulations;
- additional content assessor** means a person who is authorised by the National Director under section 22D of the Commonwealth Act;
- (2) Section 4—after the definition of **advertisement** insert:
- advertising scheme** means the scheme determined from time to time under section 31 of the Commonwealth Act;
- (3) Section 4, definition of **approved form**—delete the definition and substitute:
- approved form** means a form approved under section 8A of the Commonwealth Act;
- authorised television series assessor** means a person authorised in accordance with the scheme determined under section 14B of the Commonwealth Act to prepare assessments of television series films;
- (4) Section 4—after the definition of **buy** insert:
- classifiable elements** has the same meaning as in the Commonwealth Act;
- (5) Section 4—after the definition of **contentious material** insert:
- Convenor** means the Convenor of the National Review Board appointed under section 74 of the Commonwealth Act;
- (6) Section 4(1)—after the definition of **submittable publication** insert:
- television series film** means a film that comprises—
- (a) 1 or more episodes of a television series; or
 - (b) 1 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;

5—Insertion of section 19AA

After section 19 insert:

19AA—Consideration of television series films

- (1) The Council or the Minister may, for the purposes of the assessment of a television series film within the ambit of this section for the purposes of classifying the film, take into account an assessment of the film prepared by an authorised television assessor and furnished in the prescribed manner.
- (2) A television series film is within the ambit of this section if—
 - (a) at least 1 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
 - (b) the applicant for classification is of the opinion that the film would, if classified, be classified at a particular classification that is R 18+ or a lower classification.

- (3) An assessment prepared by an authorised television assessor must satisfy the requirements specified in the scheme established under section 14B of the Commonwealth Act.

6—Insertion of section 21A

After section 21 insert:

21A—Additional content assessment

- (1) The Council or the Minister may, for the purposes of—
- (a) the assessment of additional content associated with a film;
or
 - (b) the formulation or publication of consumer advice about additional content associated with a film,
- take into account an assessment of the additional content prepared by an additional content assessor and furnished in the prescribed manner.
- (2) An assessment under subsection (1) must—
- (a) if the film includes 1 classified film—describe, and report on the impact of, any classifiable elements in the additional content that are at the same or higher level as the classified film; and
 - (b) if the film includes more than 1 classified film—describe, and report on the impact of, any classifiable elements in the additional content that are at the same or higher level as the classified film with the highest classification; and
 - (c) if the film does not include a classified film—describe, and report on the impact of, all classifiable elements in the additional content; and
 - (d) comply with any other requirement prescribed by the regulations.
- (3) However, an assessment of an additional content assessor will have no effect under this section—
- (a) in relation to a film that falls within a classification above R 18+; or
 - (b) in any other circumstance prescribed by the regulations.

7—Substitution of section 22

Section 22—delete the section and substitute:

22—Classification of films or computer games containing advertisement

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 this Act or the Commonwealth Act 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 (either under this Act or the Commonwealth Act); or
- (c) that has been refused approval (either under this Act or the Commonwealth Act).

8—Amendment of section 23—Declassification of classified films or computer games

Section 23(2)—delete subsection (2) and substitute:

- (2) Subsection (1) does not apply to a modification that consists of—
 - (a) including or removing an advertisement, other than an advertisement to which section 22 applies; or
 - (b) for a classified film—the addition or removal of navigation functions; or
 - (c) for a classified film—the addition or removal of material which—
 - (i) provides a description or translation of the audio or visual content of the film; and
 - (ii) would not be likely to cause the film to be given a higher classification.

9—Insertion of section 23AA

After section 23 insert:

23AA—Films consisting only of classified films

Despite any other provision of this Act, a film—

- (a) that is contained in 1 device; and
- (b) that consists only of 2 or more classified films,

is to be treated, for the purposes of this Act, as if each of the classified films were on a separate device.

10—Insertion of sections 23AB and 23B

After section 23A insert:

23AB—Revocation of classification of television series films

- (1) If—
 - (a) the Council or the Minister has classified a film taking into account an assessment prepared by an authorised television series assessor under section 19AA; and
 - (b) the Council or the Minister (as the case may require) is satisfied that—
 - (i) the assessment was misleading, incorrect or grossly inadequate; and
 - (ii) if the Council or the Minister had been aware of the respects in which the assessment was misleading, incorrect or grossly inadequate before the classification was made, the Council or the Minister (as the case may be) would have given the film a different classification,

the Council or the Minister (as the case may require) must revoke the classification.

- (2) The regulations may prescribe circumstances in which an assessment is misleading, incorrect or grossly inadequate for the purposes of subsection (1)(b).
- (3) To avoid doubt, the regulations are not to be taken to limit the circumstances in which an assessment is misleading, incorrect or grossly inadequate.

23B—Revocation of classification of films containing additional content

- (1) If—
 - (a) the Council or the Minister has classified a film taking into account an assessment prepared by an additional content assessor under section 21A; and

- (b) the Council or the Minister (as the case may require) is satisfied that—
 - (i) the additional content contains any classifiable elements that—
 - (A) were not brought to the Council's or the Minister's attention in accordance with section 21A(2)(a), (b) or (c) before the classification was made; or
 - (B) were brought to the Council's or the Minister's attention in accordance with section 21A(2)(a), (b) or (c) before the classification was made but the assessment of the elements was misleading, incorrect or grossly inadequate; and
 - (ii) if the Council or the Minister had been aware of the relevant matters mentioned in subparagraph (i) before the classification was made, the Council or the Minister (as the case may be) would have given the film a different classification,

the Council or the Minister (as the case may require) must revoke the classification.

- (2) The regulations may prescribe circumstances in which an assessment of classifiable elements is misleading, incorrect or grossly inadequate for the purposes of subsection (1)(b)(i)(B).
- (3) To avoid doubt, the regulations are not to be taken to limit the circumstances in which an assessment is misleading, incorrect or grossly inadequate.

11—Amendment of section 26—Approval of advertisements

Section 26(5)(b)—delete "who looks like, a child under 16" and substitute:
appears to be, a child under 18

12—Insertion of Part 3 Division 4

Part 3—after Division 3 insert:

Division 4—Assessments of likely classifications of unclassified films and unclassified computer games

27A—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 Council 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 Council; 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.

27B—Council may assess likely classification of film or computer game

- (1) This section applies if an application has been made under section 27A for the assessment of the likely classification of an unclassified film or an unclassified computer game.
- (2) The Council may assess the classification that, in the opinion of the Council, 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 Council when making the assessment.
- (3) The Council may refuse to assess the likely classification of the film or computer game if the Council considers that the material and information available to the Council is insufficient (whether or not the Council has made a request under subsection (4)).
- (4) The Council may request that applicant to give to the Council, within the period specified in the request, further information for the purpose of enabling the Council to deal with the application.
- (5) The Council may decline to deal with the application, or decline to further deal with the application, until the information is given to the Council in accordance with the request.
- (6) To avoid doubt, this section does not require the Council to obtain further information under subsection (4) for the purposes of the Council's assessment.

27C—Revocation of assessment

- (1) If, after making an assessment under section 27B of the likely classification of an unclassified film or an unclassified computer game, but before the film or computer game is classified, the Council is of the opinion that—
 - (a) the film or computer game contains, or will contain, material of which the Council was unaware when the Council made the assessment; and

- (b) if the Council 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 Council must revoke the assessment, and must also revoke the approval of any approved advertisement for the film or game.
- (2) The Council must revoke an assessment under section 27B 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 Council do so.
- (3) The revocation of an assessment or approved advertisement takes effect—
 - (a) when written notice of the decision to revoke is given to the applicant concerned; or
 - (b) if a later day is specified in the instrument of revocation—on that later day.

27D—Notice of decisions

The Council must give written notice of a decision under section 27B or 27C 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.

13—Amendment of section 28—Exhibition of film in public place

Section 28—after its present contents (now to be designated as subsection (1)) insert:

- (2) Subsection (1) is not contravened by the exhibition of a classified film—
 - (a) under a title different from that under which it is classified if it is contained on 1 device that consists only of 2 or more classified films; or
 - (b) with modifications referred to in section 23(2) of this Act or section 21(2) of the Commonwealth Act (as the case may be),or both.

14—Amendment of section 37—Sale of films

Section 37—after its present contents (now to be designated as subsection (1)) insert:

- (2) Subsection (1) is not contravened by the sale of a classified film—
 - (a) under a title different from that under which it is classified if it is contained on 1 device that consists only of 2 or more classified films; or
 - (b) with modifications referred to in section 23(2) of this Act or section 21(2) of the Commonwealth Act (as the case may be),

or both.

15—Amendment of section 67—Certain films, publications and computer games not to be advertised

- (1) Section 67(1)(a)—delete paragraph (a)
- (2) Section 67(1)(e)—delete paragraph (e)
- (3) Section 67—after subsection (1) insert:
 - (1a) A person must not publish an advertisement for an unclassified film otherwise than in accordance with—
 - (a) the advertising scheme; or
 - (b) a transitional Commonwealth regulation.Maximum penalty: \$5 000.
Expiation fee: \$315.
 - (1b) A person must not publish an advertisement for an unclassified computer game otherwise than in accordance with the advertising scheme.
- (4) Section 67—after subsection (2) insert:
 - (3) In this section—

transitional Commonwealth regulation means a regulation under Schedule 1 Item 13 of the *Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008* (Commonwealth).

16—Amendment of section 68—Screening advertisements with feature films

Section 68—after its present contents (now to be designated as subsection (1)) insert:

- (2) A person must not screen an advertisement for an unclassified film in a public place unless the advertisement complies with the advertising scheme.
Maximum penalty: \$2 500.
Expiation fee: \$210.

17—Amendment of section 70—Sale of feature films with advertisements

Section 70—after its present contents (now to be designated as subsection (1)) insert:

- (2) A person must not sell a classified film (the *feature film*) that is accompanied by an advertisement for an unclassified film unless the advertisement complies with the advertising scheme.
Maximum penalty: \$2 500.
Expiation fee: \$210.

18—Amendment of section 71—Advertisements with computer games

Section 71—after its present contents (now to be designated as subsection (1)) insert:

- (2) A person must not sell or demonstrate a classified computer game (the *main game*) in a public place that is accompanied by an advertisement for an unclassified computer game unless the advertisement complies with the advertising scheme.

Maximum penalty: \$2 500.

Expiation fee: \$210.

19—Amendment of section 72—Advertisement to contain determined markings and consumer advice

Section 72(1)(b)(i)—delete "by the Director"

20—Amendment of section 77—Exemptions—organisations

- (1) Section 77(1)—delete "this section" and substitute:
this subsection
- (2) Section 77(1)—delete "this Part" and substitute:
section 79
- (3) Section 77—after subsection (2) insert:
 - (3) The Minister may, on application under this subsection, direct in writing that this Act does not apply, to the extent and subject to any condition specified in the direction, to an organisation approved under section 79A in respect of all or any of its activities or functions that relate to films or computer games.
 - (4) An application for a direction under subsection (3) must—
 - (a) be in writing; and
 - (b) specify the extent of the exemption sought; and
 - (c) be accompanied by the prescribed fee.

21—Amendment of section 79—Organisation may be approved (section 77(1))

Section 79(1)—delete "this Part" and substitute:

section 77(1)

22—Insertion of section 79A

After section 79 insert:

79A—Organisation may be approved (section 77(3))

- (1) The Minister, by notice published in the South Australian Government Gazette, may, on application, approve an organisation for the purposes of section 77(3) if the organisation carries on activities of an educational, cultural or artistic nature.

- (2) In considering whether to approve an organisation under this section, the Minister must have regard to—
 - (a) the purpose for which the organisation was formed; and
 - (b) the extent to which the organisation carries on activities of an educational, cultural or artistic nature; and
 - (c) the reputation of the organisation in relation to—
 - (i) the screening of films; or
 - (ii) the possession or demonstration of computer games,as the case may be; and
 - (d) the conditions as to admission of persons to—
 - (i) the screening of films by the organisation; or
 - (ii) the demonstration of computer games by the organisation,as the case may be.
- (3) An approval takes effect on the date of publication of the notice referred to in subsection (1).
- (4) The Minister may revoke an approval if, because of a change in any matter referred to in subsection (2), the Minister considers that it is no longer appropriate that the organisation be approved.
- (5) The Minister must notify an organisation in writing of a decision to revoke an approval.
- (6) Revocation of an approval takes effect on the date of notification of the decision to revoke or on a later date specified in the notice.

23—Amendment of section 83—Evidence

Section 83(1)—delete "or the Deputy of the National Director" and substitute:
 , the Deputy of the National Director or the Convenor

24—Amendment of Schedule 1

- (1) Heading to Schedule 1—delete the heading and substitute:

Schedule 1—Call-in powers

- (2) Schedule 1, clause 5(1)—delete "National Director" and substitute:
 Convenor

Schedule 1—Transitional provisions

1—Transitional provisions

- (1) In this clause—

principal Act means the *Classification (Publications, Films and Computer Games) Act 1995*.

- (2) Subsection (2) of section 23 of the principal Act, as enacted by this Act, applies to modifications made to classified films after the commencement of this subclause, whether the film was classified before or after the commencement of this subclause.
- (3) On or after the commencement of this subclause, section 23AA of the principal Act, as enacted by this Act, applies to films (*designated films*) that are contained on 1 device and consist only of 2 or more classified films—
- (a) whether the designated films were created before or after the commencement of this subclause; and
 - (b) whether the classified films were classified before or after the commencement of this subclause.