

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
ENFORCEMENT AMENDMENT BILL 2012**

EXPLANATORY MEMORANDUM

Overview of the Bill

The Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012 (the Bill) implements the decision made at the 21-22 July 2011 Standing Committee of Attorneys-Generals' meeting to introduce an R18+ computer game classification throughout Australia.

As a result, the Bill amends the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA) (WA Enforcement Act) to provide for restrictions on the demonstration, possession, sale and advertising of R18+ computer games.

Clause 1 – Short Title

Clause 1 provides that the title of the proposed Act is the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2012* (WA).

Clause 2 – Commencement

Clause 2 provides that sections 1 and 2 will come into operation on the day that the Act receives Royal Assent. The balance of the Act comes into operation on 1 January 2013 if assent day is not later than that day; or is deemed to have come into operation on 1 January 2013 if assent day is later than that day.

Clause 3 – Act amended

Clause 3 provides that the proposed Act amends the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA).

Clause 4 - Section 3 amended (Interpretation)

Section 3 of the WA Enforcement Act contains definitions of terms used in that Act.

The proposed amendment to section 3 includes reference to an R18+ computer game in the meaning of *contentious material*.

Clause 5 - Section 57 amended

Section 57 of the WA Enforcement Act provides that the indecency or obscenity provisions and penalties do not apply to certain articles, namely publications, films or computer games which have been classified.

Clause 5 amends section 57(c) to include a reference to an R18+ computer game.

Clause 6 – Section 84 amended

Section 84(2) of the WA Enforcement Act makes it an offence for a minor who is 15 years or older to buy a computer game classified RC knowing that it is so classified.

Clause 6 amends section 84(2) to also make it an offence for a minor over 15 years of age to purchase a computer game classified R18+ knowing it is so classified.

This offence is similar to that in section 79(3) of the WA Enforcement Act which makes it an offence for a minor over 15 years of age to purchase a film classified RC, X18+ or R18+.

Clause 7 – Section 85 amended

Section 85 of the WA Enforcement Act contains various offences and penalties relating to the demonstration of MA15+ computer games or unclassified computer games that would, if classified, be classified MA15+ in a public place, and the demonstration of such games in a non public place in the presence of a minor under 15 years of age, unless the person demonstrating the game is a parent or guardian of the minor.

Subclause 7(1) amends section 85(1) to also make it an offence for a person to demonstrate an R18+ computer game in a public place.

Subclause 7(2) amends section 85(2) to also make it an offence to demonstrate an unclassified computer game that would, if classified, be classified R18+ or a computer game classified R18+ so that it can be seen from a public place.

Subclause 7(3) inserts new section 85(3A) into the WA Enforcement Act. This is a new provision which makes it an offence for a person to demonstrate in a non public place in the presence of a minor an unclassified computer game that would, if classified, be classified R18+, or a computer game classified R18+. This offence does not apply if the person is the parent or guardian of the minor.

Proposed new section 85(3B) provides that it is a defence to a charge under new section 85(3A) for the person charged to prove that the person believed on reasonable grounds that the minor was an adult.

Clause 8 – Section 85A amended

Section 85A of the WA Enforcement Act makes it a requirement that an MA15+ computer game or its container or wrapping must be displayed in an area of a public place (a retail outlet) specifically set aside for the display of computer games with that classification.

Clause 8 imposes an identical requirement for the display of R18+ computer games or their containers or wrappers.

This means that MA15+ and R18+ computer games cannot be displayed amongst lower category computer games.

Clause 9 – Section 88 amended

Section 88(1) of the WA Enforcement Act makes it an offence for a person to sell or supply an MA15+ computer game to a minor who is under 15 years of age unless the person is a parent or guardian of the minor.

Section 88(2) provides a defence to a charge under section 88(1) for the person charged to prove that the person charged or that the person's agent or employee believed on reasonable grounds that the minor was 15 years of age or older.

Clause 9 does two things. Firstly, it inserts new section 88(1A) into the WA Enforcement Act. This is a new provision which makes it an offence for a person to sell or supply an R18+ computer game to a minor unless the person is the parent or guardian of the minor.

Secondly, it inserts new section 88(1B) into the WA Enforcement Act. This is a new provision which provides a defence to a charge under section 88(1A) for the person charged to prove that the minor produced to the person charged or the person's agent or employee acceptable proof of age prior to the sale or supply of the computer game, or the person charged or the person's agent or employee believed on reasonable grounds that the minor was an adult. The defence is also available for the person charged to prove that the minor was employed by the person charged or that the person's employer and the supply took place in the course of that employment.

The defence available in new section 88(1B) is identical to that in section 79(2) which relates to R18+ films.

Clause 10 – Section 89 amended

Section 89 of the WA Enforcement Act contains various offences and penalties relating to possession and copying of an unclassified computer game that would, if classified, be classified RC, a computer game classified RC, an unclassified computer game that would, if classified, be classified MA15+ and a computer game classified MA15+.

Subclause 10(1) amends section 89(2) of the WA Enforcement Act to also make it an offence for a person to possess or copy an unclassified computer game that would, if classified, be classified R18+ with the intention of selling copying or demonstrating the game or the copy in a public place.

Subclause 10(2) amends section 89(3) of the WA Enforcement Act to also make it an offence for a person to possess or copy a computer game classified R18+ with the intention of demonstrating the computer game or the copy in a public place.

Clause 11 – Section 92 amended

Section 92(2) of the WA Enforcement Act provides that a person must not exhibit in a public place an advertisement for a classified computer game during a programme for the exhibition of a classified film unless the film has a classification set out in column 1 of the Table and the computer game being advertised has a classification as set out in column 2 of the Table.

Clause 11 amends section 92(2) of the WA Enforcement Act to include a reference to an R18+ computer game in column 2 of the Table. This will allow an advertisement for an R18+ computer game to also be shown in a public place (a cinema) during a programme for the exhibition of an R18+ film.

Clause 12 – Section 94 amended

Section 94(2) of the WA Enforcement Act provides that a person must not sell a classified film that is accompanied by an advertisement for a classified computer game unless the film has a classification specified in column 1 of the Table and the advertised computer game has a classification as shown column 2 of the Table.

Clause 12 amends section 94(2) of the WA Enforcement Act to include a reference to an R18+ computer game in column 2 of the Table. This will allow an advertisement for an R18+ computer game to accompany the sale of an R18+ film.

Clause 13 – Section 95 amended

Section 95(1) of the WA Enforcement Act provides that a person must not sell a classified computer game that is accompanied by an advertisement for another classified computer game unless the main computer game has a classification specified in column 1 of the Table and the advertised computer game has a classification specified in column 2 of the Table.

Subclause 13(1) amends section 95(1) of the WA Enforcement Act to include a reference to an R18+ computer game in columns 1 and 2 of the Table. This will allow an R18+ computer game to be sold and accompanied by advertisements for other classified computer games from R18+ down to G.

Section 95(2) of the WA Enforcement Act provides that a person must not sell a classified computer game that is accompanied by an advertisement for a classified film unless the computer game has a classification specified in column 1 of the Table and the advertised film has a classification as set out in column 2 of the Table.

Subclause 13(2) amends section 95(2) of the WA Enforcement Act to include a reference to an R18+ computer game in column 1 of the Table and a reference to various classified films in column 2 of the Table. This will enable an R18+ computer

game to be sold with accompanying advertisements for films classified from R18+ down to G.

Clause 13(3) amends a typographical error in section 95(3) of the WA Enforcement Act by replacing the words “computer film” with the word “film”.

Clause 14 – Section 110 amended

Section 110(b) of the WA Enforcement Act allows a person to publish to a prescribed person or a prescribed body a computer game that is classified M, PG or G.

Clause 14 amends section 110(b) of the WA Enforcement Act to include a reference to a computer classified R18+. This will prohibit the publication of R18+ computer games.

Clause 15 – Section 153A inserted

This new section is a transitional provision which applies where there is a change of classification of computer games from MA15+ to R18+ after the commencement of the amendments in this Bill. A person will not commit an offence under the relevant section during the period of 90 days after the change of classification, but only if the person would have been in compliance with that section if the game had not been reclassified.