

# **Submission**

on the

## **Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012**

to the

### **Uniform Legislation and Statutes Review Committee**

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# 1. Introduction

On 19 September 2012 the *Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012* was introduced to the Legislative Council of the Parliament of Western Australia and, in accordance with Standing Order 126 referred to the Uniform Legislation and Statutes Review Committee for inquiry and report.

## 2. An R18+ classification for computer games

### 2.1 Decision to introduce R18+ for computer games

New Guidelines for the Classification for Computer Games will come into effect on 1 January 2013.<sup>1</sup> These guidelines provide for a new R18+ classification for computer games. Prior to these new guidelines coming into effect the highest classification for computer games has been MA15+ with computer games with content exceeding that classification categorised as Refused Classification or RC.

The national classification scheme in Australia is based on an intergovernmental agreement between the Commonwealth, States and territories relating to a revised co-operative legislative scheme for censorship in Australia which has been in force since 1995.<sup>2</sup>

Under the agreement the Commonwealth is responsible for classifying publications, films and computer games in accordance with the *Classification (Publications, Films and Computer Games) Act 1995* (Cth), the National Classification Code and guidelines.

The Classification (Publications, Films and Computer Games) Act 1995 has been amended by the Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Act 2012 which comes into effect on 1 January 2013. The amended Act provides for an R18+ classification for computer games.

Under clause H of the intergovernmental agreement any amendments to the National Classification Code or the guidelines must be agreed by each Participating Minister and the Commonwealth Minister.

An R18+ classification for computer games had been discussed for several years by censorship ministers.

At the December 2010 meeting of the Standing Committee of Attorneys-General it was decided that Ministers would “*consider draft guidelines to be developed for classification of games at their next meeting, including a possible R18+ classification, taking into account concerns raised by Ministers relating to the difference in nature of film and games; and the interactivity of games; and that there will continue to be a refused classification category.*”

It was also decided that Ministers “*do not support the dilution of the refused classification category.*”<sup>3</sup>

Taken together these decisions appeared to leave open the possibility of a new R18+ classification for computer games but only on the condition that introducing the new classification would not involve “the dilution of the refused classification category”. In other words, no computer games that would be refused classification under the current guidelines where the highest classification is MA15+ should be able to be classified R18+ under the possible new classification.

This outcome could only be achieved by carefully splitting the current MA15+ classification for computer games to ensure that those games with more violence or more intense violence are classified R18+.

At the March 2011 meeting Ministers “*considered draft new Guidelines for the Classification of Computer Games; considered the proposed amendments to the National Classification Code to support the introduction of an R 18+ classification for computer games and agreed to make a decision regarding the introduction of an R 18+ classification at the July 2011 SCAG meeting.*”<sup>4</sup>

At the July 2011 meeting Ministers “*made a decision in principle, to introduce an R 18+ category for computer games*”. They “*agreed to take the Guidelines for the Classification of Computer games, as amended at the meeting, to their respective Cabinets; agreed in principle, that the Commonwealth introduce the proposed amendments to the National Classification Code to support the introduction of an R 18+ category; agreed, to commence drafting amendments to their enforcement legislation to reflect the introduction of an R 18 + category for computer games and agreed that it would be desirable for classifications of existing games to be reviewed in light of the new classification Guidelines*”.<sup>5</sup>

On 12 September 2012 the Commonwealth Minister for Home Affairs and Justice, the Hon Jason Clare announced that “*State and Territory Ministers with responsibility for classification matters have agreed to the revised Guidelines after extensive consultation*”.<sup>6</sup>

## 2.2 Content of the new guidelines for computer games

In his second reading speech on the *Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012* the Attorney General, the Hon Michael Mischin said:

*Presently, the highest legally available classification category for computer games is MA 15+, which means that such games are unsuitable for minors under the age of 15. Games that exceed the content permitted in this category are currently classified RC; namely, refused classification. Importantly, ministers have agreed that there shall be no dilution of the RC classification and RC material will not be included in the proposed R 18+ classification. Therefore, the introduction of an R 18+ classification is a new, adults-only classification that can be applied to some of the more extreme material that may currently fit within the MA 15+ classification.*

A careful comparison of the new Guidelines for Computer Games which will come into effect on 1 January 2013 with the current provisions for the computer games demonstrates that the Attorney General is incorrect in his claim that “*there shall be no dilution of the RC classification and RC material will not be included in the proposed R 18+ classification.*”

Rather the new Guidelines will allow computer games with content that would previously have been Refused Classification to be classified R18+.

The Guidelines use a hierarchy of impact as the prime means of assigning content to a classification. The impact scale is set out as follows in ascending order:

- very mild - G
- mild - PG
- moderate - M
- strong - MA 15+

- high - R 18+
- very high – RC.<sup>7</sup>

Under the current guidelines the highest classification provided for computer games is MA15+ so computer games with an impact that exceeds “strong” are Refused Classification. The new Guidelines provide for computer games with an impact that is considered “high” to be classified R18+ and therefore computer games with this less of impact will no longer be Refused Classification.

The Guidelines provide more specific guidance in relation to six classifiable elements for each classification category: themes, violence (including sexual violence), sex, language, drug use and nudity.

In each of these cases the new R18+ classification for computer games will accommodate content which would have been Refused Classification under the current guidelines.

- **Themes**

“Themes” are defined in the glossary as “*Social issues such as crime, suicide, drug and alcohol dependency, death, serious illness, family breakdown and racism*”.

Under the current guidelines it was specified that to avoid being Refused Classification a computer game may have “*strong themes*” but that these needed to be “*justified by context*”.

Under the new Guidelines a computer game could have high impact themes without any requirement for justification by context. The new Guidelines specifically state “*There are virtually no restrictions on the treatment of themes*”.

- **Violence**

Under the current guidelines it was specified that to avoid being Refused Classification a computer game may have strong impact violence but that this needed to be “*justified by context*”.

Under the new Guidelines a computer game could have high impact violence provided that in context it is not “*frequently gratuitous, exploitative and offensive to a reasonable adult*”.

- **Sexual violence**

Under the current guidelines it was specified that to avoid being Refused Classification a computer game may have *strong* impact sexual violence but that this could only be implied (rather than directly depicted) and needed to be “*justified by context*”.

Under the new Guidelines the requirement that sexual violence must be justified by context and may only be implied not visually depicted is retained. Nor may it be related to incentives or rewards or interactive. However, the impact of the sexual violence may be *high*.

- **Sex**

Under the current guidelines it was specified that to avoid being Refused Classification a computer game may have *strong* impact sexual activity but that this could only be implied.

Under the new Guidelines depictions of actual sexual activity are still not permitted. However, depictions of simulated sexual activity are permitted provided that they are not explicit and realistic. Sexual activity may be *high* impact.

- **Language**

Under the current guidelines it was specified that to avoid being Refused Classification a computer game may have *strong* coarse language but that aggressive or very strong coarse language should be infrequent.

Under the new Guidelines it is specified that “*there are virtually no restrictions on language*” so frequent, aggressive, high impact coarse language is permitted.

- **Drug use**

Under the current guidelines it was specified that to avoid being Refused Classification a computer game may have *strong* impact drug use provided this was “*justified by context*”.

Under the new Guidelines a computer game could have *high* impact drug use without any requirement to be justified by context. However, drug use related to incentives and rewards is not permitted. Interactive illicit or proscribed drug use that is detailed and realistic is not permitted.

- **Nudity**

Under the current guidelines it was specified that to avoid being Refused Classification a computer game may have *strong* impact nudity provided this was “*justified by context*”.

Under the new Guidelines *high* impact nudity is permitted with no requirement that it be justified by context.

Unless and until they are amended by a further decision of the Ministers then the new *Guidelines for Computer Games* which come into effect on 1 January 2013 will, contrary to the decision of Ministers made at the Standing Committee of Attorneys General on 10 December 2010 and cited by the Attorney General in his second reading speech, dilute the RC classification and allow computer games with content that would previously have been Refused Classification to be classified R18+.

***Recommendation 1:***

***As there is a conflict between the agreement of 10 December 2010 not to dilute the Refused Classification (RC) and the new Guidelines for Computer Games, Western Australia should not allow the sale of computer games classified as R18+ until the Guidelines are amended to accurately reflect the decision of 10 December 2010 endorsed by the Attorney General in his second reading speech on this Bill as the policy position to which Western Australia has agreed.***

### **3. Enforcement provisions**

Item 4 of the intergovernmental agreement provides that:

*Each participating State is to enact legislation to enforce classification decisions of the Board and the Review Board as to publications, films and computer games.*<sup>8</sup>

Nothing in the intergovernmental agreement or the decisions of the Standing Committee of Attorneys General specifies what enforcement provisions the participating States should enact. The national classification scheme allows for each participating State to make sovereign decisions as to which classifications of publications, films or computer games to allow to be sold and under which conditions.

For example the national classification scheme provides for a classification of X18+ for films. However, all participating States other than the Australian Capital Territory and the Northern Territory prohibit the sale of X18+ films under their enforcement legislation.<sup>9</sup>

Similarly, Queensland prohibits the sale of Category 1 and Category 2 Restricted publications.<sup>10</sup>

It is therefore open to Western Australia while remaining a fully participating State in the national classification scheme to prohibit the sale of the new R18+ computer games.

In fact it is imperative that Western Australia pass enforcement legislation addressing R18+ computer games before 1 January 2013 otherwise there will be provisions and the sale of R18+ computer games, including to minors, would be unregulated.

The most straightforward means to achieve the prohibition on the sale of R18+ computer games – that is to maintain the ban on computer games with content that up until 1 January 2013 would have been Refused Classification – would be to amend each provision of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* dealing with RC computer games by inserting “or R18+” in the provision. The relevant provisions are in sections 84, 87, 88 and 89 of the Act.

This outcome could be secured by amending the current Bill.

***Recommendation 2:***

***The Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012 should be amended to ensure that R18+ computer games are prohibited from being sold in Western Australia.***

## **4. Violence in computer games**

There is now a substantial body of scientific research into the effects of violent computer games on players. This research demonstrates that violent computer games are significantly associated with:

- increased aggressive behaviour, thoughts, and affect;
- increased physiological arousal;
- decreased pro-social (helping) behaviour.<sup>11</sup>

Researchers Swing and Anderson say:

*A clear picture has emerged of the effects of violent video games on aggressive affect, behavior, and cognition... Short term exposure to violent video games produces immediate increases in aggressive behavior, aggressive cognition, and aggressive affect; repeated exposure leads to the development of stable individual differences in aggressiveness.<sup>12</sup>*

Recently longitudinal studies have also found a relative increase in aggression over time by those who consume high levels of violent video games.

Anderson and colleagues conducted longitudinal research in the United States and Japan which demonstrated that habitually playing violent video games leads to increased physical aggression some months later in children and adolescents and that this effect occurs in the two very different cultural contexts of the United States and Japan. The research contradicted the popular hypothesis that only aggressive children become more aggressive from playing violent video games.<sup>13</sup>

A longitudinal study of German adolescents by Moller and Krahe found that exposure to violent games influenced physical aggression 30 months later via an increase of aggressive norms and hostile attribution bias.<sup>14</sup>

Wallenius and Punamaki have reported the results of a longitudinal study of Finnish adolescents. It found that:

*Digital game violence was linked to direct aggression both longitudinally and synchronously, and the link was moderated by parent–child communication in interaction with sex and age. Results suggest that the moderating role of parent–child communication changes with increasing age. Poor parent–child communication may be one of the factors in an adolescent's development that may strengthen the negative effects of digital game violence, but even good parent–child communication does not necessarily protect the adolescent in the long run. Digital game violence seems to be one of the risk factors of increased aggressive behavior.*<sup>15</sup>

Some other particular findings from recent studies include the following:

- violent video games are especially likely to increase aggression when players identify with violent game characters;<sup>16</sup>
- increased play of a violent first person shooter video game can significantly increase aggression;<sup>17</sup>
- participants who previously played a violent video game had lower heart rate and galvanic skin response while viewing filmed real violence, demonstrating a physiological desensitisation to violence;<sup>18</sup>
- video game violence exposure was associated with stronger pro-violence attitudes in 4<sup>th</sup> and 5<sup>th</sup> graders;<sup>19</sup>
- violence desensitisation should be reflected in the amplitude of the P300 component of the event-related brain potential (ERP), which has been associated with activation of the aversive motivational system. Violent images elicited reduced P300 amplitudes among violent, as compared to non-violent video game players. Additionally, this reduced brain response predicted increased aggressive behaviour in a later task. Moreover, these effects held after controlling for individual differences in trait aggressiveness;<sup>20</sup>
- adolescents who expose themselves to greater amounts of video game violence were more hostile, reported getting into arguments with teachers more frequently, were more likely to be involved in physical fights, and performed more poorly in school. Mediation pathways were found such that hostility mediated the relationship between violent video game exposure and outcomes.<sup>21</sup>

Anderson reports that “*the long term effect of video game violence on later aggression and violence is larger than most known risk factors for adolescent violence, such as abusive parents, poverty, and antisocial parents*”.<sup>22</sup>

In a 2010 meta-analysis of studies on computer game violence Anderson and colleagues concluded that “*the evidence strongly suggests that exposure to violent video games is a causal risk factor for increased aggressive behavior, aggressive cognition, and aggressive affect and for decreased empathy and prosocial behavior.*”<sup>23</sup>



Reviewing this meta-analysis L. Rowell Huesmann comments:

*About 38 years ago, Jesse Steinfeld, then Surgeon General of the United States, reviewed the research that had been conducted to date on the effects of TV violence on youth behavior. He stated in testimony before Congress, "It is clear to me that the causal relationship between [exposure to] televised violence and antisocial behavior is sufficient to warrant appropriate and immediate remedial action... There comes a time when the data are sufficient to justify action. That time has come" (Steinfeld, 1972, pp. 25–27). With the evidence provided by Anderson et al. (2010), it would now be fair to make the same statement about violent video games.*

*It is time for the public health establishment to accept the fact that playing violent video games increases the "risk" that the player will behave more aggressively.<sup>24</sup>*

There are three reasons why the effect of violence from playing a computer game is likely to be greater than that from viewing a film:

- in playing a computer game the player often identifies with the aggressor;
- in playing a computer game the player often actively rehearses the whole sequence of aggression; and
- in violent computer games the proportion of the game devoted to violence is higher than for most violent films.

Swing and Anderson explain how each of these factors would work:

*A common question about violent videogame effects is whether they are stronger than the effects that have been found for violent television and films. There are several reasons, based on social psychological theory, to believe this to be the case. First, theory suggests that identification with an aggressor makes an individual more likely to behave aggressively in the future. Videogames force a player to identify with the aggressor because the player is controlling them... This increased identification with the aggressor is likely to make the rewards for the portrayed violence more direct and salient as well.*

*Violent videogames may also have a stronger effect on aggressive behavior than films or television because these games often allow the player to rehearse the entire aggression sequence. A player may be required to look for threats, identify them, make a decision, and take aggressive action in a game, whereas television or film observer may not rehearse all of these steps in watching a film or television show. By developing more complete aggressive scripts, future aggressive behavior becomes more likely.*

*The overall rate of violence tends to be higher in violent videogames than violent films and television shows. Even films and television shows with generally violent themes often spend a decent amount of time in non-violent plot development. Many videogames, on the other hand, contain non-stop violence. This difference in the quantity of violence is likely to make the effect of videogame violence stronger than that of television and film.<sup>25</sup>*

### **Recommendation 3:**

***The intergovernmental agreement on censorship and the national classification scheme preserve Western Australia's sovereignty over which classifications of publications, films and computer games may be sold in Western Australia.***

***The new R18+ classification for computer games will include computer games with high impact violence. There is a solid body of evidence that violent content in***

*computer games is associated with adverse effects on players. This evidence is sufficient to justify continuing to prohibit the sale of high impact violent computer games in Western Australia.*

*The prohibition on the sale of such computer games after 1 January 2013 can only be achieved by prohibiting the sale of R18+ computer games. This prohibition should be enacted before that date.*

## 5. Endnotes

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