

EXPLANATORY STATEMENT

Guidelines for the Classification of Computer Games 2012

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

Section 12 of the Classification Act provides that the Minister may, with the agreement of each participating Minister, determine guidelines to assist the Board in applying the criteria in the *National Classification Code*. If the Minister and each participating Minister agree to an amendment of the guidelines, the guidelines are taken to be amended accordingly.

Issues giving rise to the need for the instrument

The current classification categories available for computer games under the Classification Act 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.

The making of the *Guidelines for the Classification of Computer Games* is necessitated the by 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. In 2011 public consultation on earlier drafts of the Guidelines for Classification of Computer Games was conducted. In August 2012 agreement to this instrument was reached between each State and Territory Minister responsible for Classification.

This instrument has no financial implications.

Purpose of the instrument

The current *Guidelines for the Classification of Films and Computer Games* contain detailed descriptions of each of the classification categories. They list the criteria (or ‘classifiable elements’) used by the Classification Board when making classification decisions and the types of content suitable for each category. The current guidelines are combined, that is, they apply the same classification criteria to films and computer games.

In line with the requirements of the Classification Act, each participating Minister must agree to the classification guidelines. When Ministers agreed to introduce the R 18+ classification for computer games, they also agreed that the existing *Guidelines for the Classification of Films and Computer Games* should be amended to create separate *Guidelines for the Classification of Computer Games*.

In accordance with Ministers' decision, this instrument establishes standalone *Guidelines for the Classification of Computer Games*, which are necessary to support the introduction of an R 18+ category for computer games. The form and content of the *Guidelines for the Classification of Computer Games* are substantially similar to the classification criteria for computer games set out in the current combined *Guidelines for the Classification of Films and Computer Games*. However, the new standalone guidelines for computer games include the new R 18+ category which will be created by the amending Act, and the following revisions to the classification criteria as it pertains to content in computer games:

Under the heading 'Assessing impact', 'encourages interactivity' is deleted and replaced by 'highly interactive' and 'links to incentives or rewards to high impact elements'. Three paragraphs discussing interactivity are deleted.

Addition of a new heading 'Interactivity and computer games' providing more detailed information about the consideration of interactivity in the classification of computer games.

Addition of a new heading "Classification Board's application of the Guidelines". The information under this heading reiterates the roles of the Classification Board and the Classification Review Board and the obligation of the Classification Board to apply the Guidelines.

G (General) category

Under the heading 'Violence', the words 'implied or otherwise' are inserted in the second line, to clarify the prohibition on sexual violence in the G category.

Under the heading 'Sex', a second line is inserted to clarify that sexual activity must not be related to incentives and rewards.

Under the heading 'Drug use', two additional lines are inserted to clarify that drug use related to incentives and rewards and interactive illicit or proscribed drug use are not permitted.

Under the heading 'Nudity, the modifier 'infrequent' is inserted in the first line, ' and a second line is added to clarify that nudity must not be related to incentives and rewards.

PG (Parental Guidance) category

Under the heading 'Violence', the words 'implied or otherwise' are inserted in the second line to clarify the prohibition on sexual violence in the PG category.

Under the heading ‘Sex’, a second line is inserted to clarify that sexual activity must not be related to incentives and rewards.

Under the heading ‘Drug Use’, the modifier ‘infrequent’ is inserted in the first line, and two additional lines are inserted to clarify that drug use related to incentives and rewards, and interactive illicit or proscribed drug use are not permitted.

Under the heading ‘Nudity’, the modifier ‘infrequent’ is inserted in the first line, and a second line is added to clarify that nudity must not be related to incentives and rewards.

M (Mature) category

The words ‘implied or otherwise’ are inserted in the second line under the heading ‘Violence’, to clarify the prohibition on sexual violence in the M category.

Under the heading ‘Sex’, a second line is inserted to clarify that sexual activity must not be related to incentives and rewards.

Under the heading ‘Language’, clarification that coarse language should not be gratuitous, exploitative or offensive is added.

Under the heading ‘Drug Use’, two additional lines are inserted to clarify that drug use related to incentives and rewards, and interactive illicit or proscribed drug use are not permitted.

Under the heading ‘Nudity’, a second line is added to clarify that nudity must not be related to incentives and rewards.

MA 15+ (Mature Accompanied) category

Under the heading ‘Violence’, a line is added to clarify that ‘strong and realistic violence should not be frequent or unduly repetitive. The line ‘sexual violence may be implied, if justified by context’ is changed to ‘Sexual violence, implied or otherwise, is not permitted’. This establishes an absolute prohibition on sexual violence at this classification.

Under the heading ‘Sex’, a second line is inserted to clarify that sexual activity must not be related to incentives and rewards.

Under the heading ‘Language’, clarification that aggressive coarse language should not be gratuitous, exploitative or offensive is added.

Under the heading ‘Drug Use’, two additional lines are inserted to clarify that drug use related to incentives and rewards, and interactive illicit or proscribed drug use are not permitted.

Under the heading ‘Nudity’, a second line is added to clarify that nudity must not be related to incentives and rewards.

R 18+ (Restricted) category

Under the heading ‘Violence’, a caveat has been inserted to prohibit high impact violence that is, in context, frequently gratuitous, exploitative and offensive to a reasonable adult. Implied sexual violence is restricted to non-visual, non-interactive depictions that are justified by context and not related to incentives or rewards. This clarification replaces the sentence ‘Sexual violence may be implied, if justified by context’. The line ‘actual sexual violence is not permitted’ is added.

Under the heading ‘Sex’, the general rule regarding sexual activity, has been removed to clarify that actual sexual activity is not permitted. There is an additional prohibition against depictions of simulated sexual activity that are explicit and realistic, to address technological changes that might in the future permit ‘all but real’ sexual activity.

Under the heading ‘Drug use’, two additional lines are inserted to clarify that drug use related to incentives and rewards and interactive illicit or proscribed drug use that is detailed and realistic are not permitted.

RC (Refused Classification) category

Under the heading ‘Crime or violence’, there is repetition of information as per the R18+ category, that depictions of actual sexual violence, and implied sexual violence related to incentives and rewards will be classified RC.

Under the heading ‘Sex’, there is repetition of the prohibition in the R 18+ category against actual sexual activity. The prohibitions in the R18+ category against depictions of simulated sexual activity that are explicit and realistic (to address technological changes that might in the future permit ‘all but real’ sexual activity), are also repeated.

Commencement arrangements

The *Guidelines for the Classification of Computer Games* 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 to by participating Ministers.

The guidelines are 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

Guidelines for the Classification of Computer Games

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 R 18+ 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 *Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Bill 2012* (the 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.

The making of the *Guidelines for the Classification of Computer Games* is consequential to the amendments to the Classification Act made by the Amending Act. The *Guidelines for the Classification of Computer Games* support the introduction of the R 18+ computer game classification by providing guidelines for classifying computer games, including the new R 18+ category created by the amended 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 instrument is based on, and is substantially similar to, the *Guidelines for the Classification of Films and Computer Games*. The classification categories are established under s 7 of the Act. Classification guidelines contain detailed descriptions of each of the categories. They list the criteria (or ‘classifiable elements’) used by the Classification Board when making classification decisions and the types of content suitable for each category. The new games guidelines contain revised criteria, including tighter controls on content in categories which are not restricted to adults.

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

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.