

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 209

Customs (R 18+ Computer Games) Legislation Amendment Regulation 2012 (No. 1)

Issued by the Authority of the Minister for Home Affairs

The Australian Government controls the exportation and importation of certain goods from and into Australia. These controls are regulated under the *Customs (Prohibited Exports) Regulations 1958* (the Export Regulations) and the *Customs (Prohibited Imports) Regulations 1956* (the Import Regulations). Export and import controls apply to a range of goods including goods which may be classifiable under the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act).

Authority for making the instrument

Subsection 270(1) of the *Customs Act 1901* (the Customs Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Customs Act prescribing all matters which, by the Customs Act, are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Customs Act or for the conduct of any business relating to Customs.

Section 112 of the Customs Act allows the Governor-General to make regulations which prohibit the exportation of goods from Australia. Section 50 of the Customs Act allows the Governor-General to make regulations which prohibit the importation of goods into Australia.

Issues giving rise to the need for the instrument

In making decisions under the Classification Act, the Classification Board and Classification Review Board apply the criteria provided in the Classification Act, relevant classification guidelines and the National Classification Code to make their decisions. Classification policy and classification criteria are jointly agreed to by Commonwealth, State and Territory Ministers responsible for classification matters.

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 category for computer games that is legally restricted to adults, that is, persons 18 years of age and over.

The passing by Parliament of the Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Bill 2012 (the R 18+ Bill) on 6 July 2012 amends the Classification Act to introduce an R 18+ (Restricted) category for computer games. The R 18+ Bill commences on 1 January 2013.

In defining “objectionable goods”, the Customs Export Regulations and Customs Import Regulations (Customs Regulations) refer to computer games which are “unsuitable for a

person under 18 to see or play”. With the introduction of an R 18+ classification for computer games, this definition is no longer appropriate. Games classified R 18+ are not suitable for a person under 18 to see or play and therefore would be captured by the definition of objectionable goods. This would prevent such computer games from being legally exported or imported.

To ensure that computer games classified R 18+ are not caught by the definition of objectionable goods, the amendment Regulation removes the reference to “unsuitable for a person under 18 to see or play”.

To ensure that computer games classified RC are prohibited exports and imports, the amendment Regulation expands the definition of objectionable goods to also apply to computer games classified RC under the Classification Act. Explicitly identifying computer games classified RC as objectionable goods under the Customs Regulations will ensure that there is no ambiguity about whether these games are objectionable goods.

While computer games classified RC are specifically defined to be objectionable goods under the Customs Regulations, this should not be interpreted as excluding publications and films classified RC from the definition of objectionable goods.

Purpose of the instrument

The *Customs (R 18+ Computer Games) Legislation Amendment Regulation 2012 (No. 1)* is a consequential amendment necessitated by the passing of the R 18+ Bill.

This Instrument amends the Export Regulations, at Schedule 1, and the Import Regulations, at Schedule 2, to support the introduction of the R 18+ classification for computer games under the Classification Act.

Schedule 1 – Amendments to the *Customs (Prohibited Exports) Regulations 1958*

This Instrument amends the definition of objectionable goods under the Export Regulations. Specifically, this Instrument removes Regulation 3(2)(c) from the list of objectionable goods. Regulation 3(2)(c) relates to computer games which are unsuitable for a person under 18 to see or play.

This Instrument inserts a new category of objectionable goods which also captures computer games classified RC under the Classification Act.

This amendment will ensure that games classified R 18+ are able to be exported from Australia, whilst prohibiting the exportation of computer games classified RC under the Classification Act.

Schedule 2 – Amendments to the *Customs (Prohibited Imports) Regulations 1956*

This Instrument amends the definition of objectionable goods under the Import Regulations. Specifically, this Instrument removes reg 4A(1A)(c) from the list of objectionable goods. Regulation 4A(1A)(c) relates to computer games which are unsuitable for a person under 18 to see or play.

This Instrument inserts a new category of objectionable goods which also captures computer games classified RC under the Classification Act.

This amendment will ensure that games classified R 18+ are able to be imported into Australia, whilst prohibiting the importation of computer games classified RC under the Classification Act.

Commencement arrangements

The *Customs (R 18+ Computer Games) Legislation Amendment Regulation 2012 (No. 1)* commences on 1 January 2013. This is the day on which the R 18+ classification category for computer games commences under the Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Bill 2012.

The Hon Jason Clare MP

Minister for Home Affairs

Statement of Compatibility with Human Rights

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

Customs (R 18+ Computer Games) Legislation Amendment Regulation 2012 (No. 1)

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

The Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Bill 2012 (the Bill) creates a new R 18+ adult category for computer games under the *Classification (Publications, Films and Computer Games) Act 1995* (the Act). The Bill was passed by Parliament on 6 July 2012 and commences on 1 January 2013.

A Statement of Compatibility was prepared for the R 18+ Bill. The Bill was found to engage the human right of freedom of expression. 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".

Consequential amendments to the *Customs (Prohibited Exports) Regulations 1958* (the Export Regulations) and the *Customs (Prohibited Imports) Regulations 1956* (the Import Regulations) are required to support the introduction of the R 18+ computer game classification. The consequential changes to the Export Regulations and Import Regulations are made in the *Customs (R 18+ Computer Games) Legislation Amendment Regulation 2012 (No. 1)*. None of the amendments make any substantive changes to the law.

Customs (Prohibited Exports) Regulations 1958

This instrument removes the paragraph in the Export Regulations prohibiting the exportation of computer games that are unsuitable for a person under 18 to see or play. This instrument inserts a new category of objectionable goods into the Export Regulations which captures games classified Refused Classification (RC) under the Classification Act. This will ensure that computer games classified R 18+ are able to be exported from Australia, whilst ensuring protections exist against the exportation of computer games classified RC.

Customs (Prohibited Imports) Regulations 1956

This instrument removes the paragraph in the Import Regulations prohibiting the importation of computer games that are unsuitable for a person under 18 to see or play. This instrument inserts a new category of objectionable goods into the Import Regulations which captures computer games classified RC under the Classification Act. This will ensure that computer games classified R 18+ are able to be imported into Australia, whilst ensuring protections exist against the importation of computer games classified RC.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.