

EXPLANATORY STATEMENT

Issued by the Authority of the Secretary of the Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

Classification (Publications, Films and Computer Games) Act 1995

Classification (Accredited Persons) (Application for Revocation of Classification) Determination 2024

Authority

This instrument is made under subsection 22L(8) of the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act).

Paragraph 22L(8)(b) provides for a new instrument to be made by the Secretary of the Department to determine a class of persons who can apply to the Classification Board (the Board) for revocation of a decision by an accredited person, for the purposes of paragraph 22L(7)(b).

The instrument supports the operation of amendments to the Classification Act contained in the *Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification and Other Measures) Act 2023* (the Classification Amendment Act), which will commence on 15 March 2024.

This instrument is made in advance of commencement in reliance on section 4 of the *Acts Interpretation Act 1901*, noting that the Classification Amendment Act received the Royal Assent on 14 September 2023.

Purpose and operation

The purpose of this instrument is to determine a class of persons that can apply to the Board to revoke a decision of an accredited classifier for the classification of film and computer game content. The effect of this determination is to provide for persons other than the Director of the Board, the Minister or Secretary to be able to seek revocation of a classification decision by an accredited person.

Amendments to the Classification Act commencing on 15 March 2024 include, among other things, the establishment of a new accreditation scheme for persons to classify films and computer games, as well as changes to the Board's powers to quality assure decisions made by accredited classifiers.

Specifically, section 22K of the Classification Act provides for the establishment of an accreditation scheme to enable content providers to use classifiers (either in-house or third party) who have been trained and accredited by Government to classify content. This will provide an additional method for industry to have content classified, other than applying to the Board or the use of Minister-approved classification tools.

To ensure the consistency and reliability of classification information, the Board is empowered under subsection 22L(1) to conduct checks of decisions made by accredited classifiers and, where necessary, revoke these classification decisions.

Subsection 22L(2) provides for the Board to conduct checks and revoke a decision of an accredited person of its own initiative or at the request of the Minister or Secretary. It also provides for revocations to be conducted on application, within 3 months of the original decision taking effect.

Subsection 22L(8) provides for the Secretary to make a determination regarding the class of persons who can make such an application, and/or a time period of longer than 3 months during which such an application can be made.

This determination specifies the following two classes of person who can make an application to the Board for the revocation of a decision by an accredited person:

- a participating Minister with responsibility for classification matters, reflecting that the National Classification Scheme is a cooperative arrangement between the Commonwealth, states and territories; or
- publishers of the classified content, to provide an avenue of review where they believe content has been incorrectly classified by a third party or in-house classifier and published on the National Classification Database.

The instrument does not specify a longer time period for the purposes of paragraph 22L(2)(c), during which an application can be made to the Board seeking the revocation of a classification decision.

Details of the instrument are set out in Attachment A.

Consultation

The Board and industry were consulted on amendments to the Classification Act. Separate consultations were not undertaken for this instrument as the changes are administrative and reflect the amendments to the Classification Act.

Impact analysis

The Office of Impact Analysis was consulted in the development of the Classification Amendment Act, which this instrument supports, and assessed the proposal as having no more than minor regulatory impacts (OBPR22-03305).

Commencement and sunseting arrangements

This instrument will commence on the later of: the start of the day after it is registered; and the same time as the Classification Amendment Act on 15 March 2024.

This is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). In accordance with subsections 44(1) and 54(1) of the Legislation Act, it is not subject to disallowance or sunseting, because the Classification Act facilitates the operation of an intergovernmental scheme and authorises the instrument to be made.

Details of the *Classification (Accredited Persons) (Application for Revocation of Classification) Determination 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Classification (Accredited Persons) (Application for Revocation of Classification) Determination 2024*.

Section 2 – Commencement

This section provides that this instrument commences on the later of:

- (a) the start of the day after this instrument is registered; and
- (b) the same time as the *Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification and Other Measures) Act 2023* commences.

Section 3 – Authority

This section provides that this determination is made under subsection 22L(8) of the *Classification (Publications, Films and Computer Games) Act 1995*.

Section 4 – Definitions

This section provides a note that:

A number of expressions used in this instrument are defined in section 5 of the Act, including the following:

- (a) Board;
- (b) classified;
- (c) computer game;
- (d) film;
- (e) participating Minister;
- (f) publish.

It also provides that in this determination:

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

application for revocation means an application made under paragraph 22L(2)(c) of the Act for the Board to exercise its power to revoke a classification made by an accredited person.

publisher means a person who has published or intends to publish the film or computer game.

Section 5 – Class of persons who may make an application for revocation

This section provides that, for the purposes of paragraph 22L(7)(b) of the Act, the following constitute a class of persons who may make an application for revocation:

- (a) a participating Minister;
- (b) the publisher of the film or computer game.