SECOND READING SPEECH – HON. MICHAEL FERGUSON MP

Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2015

Madam Speaker, the *Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2015* makes a number of minor technical amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*. These reforms are required as a result of large scale reforms to the classification system in Australia, which is principally regulated by the Commonwealth.

The national classification scheme, a cooperative regulatory scheme for films, publications and computer games, was implemented through the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* and complementary state and territory enforcement legislation.

The cooperative classification scheme is underpinned by an Intergovernmental Agreement on Censorship made between the Commonwealth and all states and territories (the IGA). The IGA confirms that certain changes to the scheme, such as amendments to the Commonwealth Classification Act, the National Classification Code and classification guidelines, must be considered and agreed to by all Censorship Ministers.

As the national Classification Scheme is overseen by the Commonwealth and State and Territory Censorship Ministers, classification matters are dealt with at the Law Crime and Community Safety Council.

The complementary State and Territory legislation provides for restrictions and offences relating to classification.

The national classification scheme was reviewed by the Australian Law Reform Commission in 2011 and a final report published in 2012. This was the first comprehensive review of censorship and classification since the ALRC report Censorship Procedure published in 1991. The 1991 report and its recommendations formed the basis of the 1995 legislation and the current cooperative scheme.

The current scheme was developed in a pre-internet environment when the wider implications of media convergence for content regulation generally were not well understood. In the context of ever increasing media technologies, platforms and services and more media being accessed from the home through high-speed broadband networks, the need for law that reflects community expectations in an ever evolving technological environment is a challenge.

The Australian Law Reform Commission's 2012 Report on the National Classification Scheme made a number of recommendations for reform of the classification system. At the April 2013 meeting of the Standing Council on Law and Justice, Ministers agreed to progress a number of these reforms.

As I have mentioned, the Commonwealth plays the main role in classification and it is the Commonwealth which has been required to legislate for these reforms. The reforms were in relation to exemptions, modifications, decision making instruments and markings. The reforms that have been made in relation to exemptions and modifications require consequential amendments to state and territory legislation.

The reforms were implemented through the Commonwealth's *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014*. The reforms contained within the Act commence in a staggered manner. Amendments in relation to certificates for exempt films and computer games, amendments in relation to determined markings and consumer advice and amendments in relation to modifications have commenced. Conditional 'cultural exemption' reforms will commence later this year. These cultural exemption reforms will apply to film festivals predominantly and will reduce red tape in the festival industry.

The 2014 amendments to the Commonwealth Act have resulted in a number of minor technical amendments being required to the Tasmanian Act. This Bill delivers those amendments.

Previously, section 21 of the Commonwealth Classification Act provided that, subject to some very limited exceptions, if a classified film or classified computer game was modified, it became unclassified.

Exemptions from the modification rule included the addition or removal of advertisements, the addition or removal of navigation functions and the addition or removal of captions (and the like) for the hearing impaired.

This strict and prescriptive modification rule was narrowly interpreted by the Courts. It was the subject of complaint from industry that it is too narrow and results in content being unnecessarily classified many times over – that is each time a caption is added or removed from a film or game. This can be both costly and time consuming for distributors.

Such a prescriptive rule did not keep pace with evolving technology and any list of specific modification types risks becoming less relevant over time. It also added a layer of red tape to industry. The Australian Law Reform Commission recommended that in order to "future proof" the modification provisions, whether or not something has been modified should depend on whether or not the content itself has materially changed, not simply on the type of modification.

There is a number of examples of modifications that do not generally affect the content of the original classified product, but was not exempt under section 21 of the Commonwealth Classification Act. I will set out some of these examples for members.

2D to 3D changes: a 3D version of a film is treated as a different film from the 2D version and both versions of the film are required to be classified. Film distributors have criticised this arguing that it is costly, time consuming and unnecessary to classify twice what is essentially the same film just because the visual format is changed. The same issue can also arise in relation to 2D and 3D versions of computer games. To date, 3D

and 2D versions of the same film always receive the same classification and consumer advice, with the exception of one instance.

Title changes: Generally, all films, computer games and publications must be sold, hired, advertised or exhibited with the title under which they were classified. Any alternative titles recorded on the original classification certificate can also be used. Any further title changes after the classification decision has been made require the distributor to apply for a new classification reflecting the new title. A modification to the title of a classified product is generally unlikely to affect the product's classification or consumer advice. There may however be instances of, for example, inclusion or removal of coarse language from the title which could require a new classification or consumer advice.

Breaking up a classified product into parts: if a classified product is broken into several shorter parts, those parts are considered to be unclassified, even if there is no other change to the actual content of the product.

'Recombinations' of already classified television episodes: distributors sometimes re-issue already classified episodes of television series, but in a different combination from that in which they were originally classified. In such circumstances, the new combination of episodes would need to be classified, again, even though all episodes had already been classified and the classification would not be affected by the new combination.

Additional content released with an already classified film: Distributors frequently release classified films with additional content such as interviews, commentary, extra scenes, etc. The inclusion of this additional content is a modification to the original film and causes it to become unclassified.

'Mods' and expansion packs for computer games: 'mods' and expansion packs, also known as 'add-ons', add new features to a previously released computer game. Such add-ons can be simple, for example adding a change in the colour of a character's clothes, or a new object to the game. More complex add-ons include new levels, and/or an extended storyline for the original game.

Expansion packs are often sold separately from the original game. Alternatively, a new version of the game may be released with modifications incorporated into the original game data. Prior to these reforms, the National Classification Scheme required all 'mods' (i.e. modifications) and expansion packs to be classified, even in cases where there was no change to the game-play.
These examples have imposed additional costs and administrative burdens on distributors for no obvious community benefit. Therefore, the Commonwealth Act has been amended to make the modification rules less prescriptive and establish more flexible modification rules for minor technical and format changes to films and computer games.

When classifying products, the Classification Board also assigns consumer advice as appropriate. Only the Classification Board can assign consumer advice and this only occurs when the Board is classifying a product. Consumer advice cannot be changed subsequently without the product being reclassified. Section 20 of the Commonwealth

Classification Act requires the Board to determine consumer advice for films and computer games classified PG and higher.

There are some modifications that could affect the consumer advice but not the actual product classification.

An example of this is a product that is modified by adding and/or removing content. The consumer advice may need to be amended, even if the classification itself is unaffected by the modification. A film rated MA 15+ may contain violence and have a consumer warning to this affect. The addition of a sex scene may not change the rating so would require additional consumer warning.

The amendments made in Part 4 of this Bill reflect these changes to the Commonwealth Act. They provide that a modified film may be exhibited in a public place, that a modified film may be sold or delivered and that a modified computer game may be sold.

The Australian Law Reform Commission Recommendation 6.3 suggests amending Part 5B of the Commonwealth Classification Act, which sets out the types of films and computer games that are exempt from classification.

Section 5B of the Commonwealth Classification Act allows for certain categories of films and computer games—those that do not contain material that would be likely to cause the item to be classified M or higher (in other words content that is up to and including PG level)—to be exempt from classification requirements. There were five exempt computer games categories covering: business; accounting; professional; scientific; and educational games.

New categories that have been added are: any film relating wholly or mainly to the social sciences, including economics, geography, anthropology and linguistics; any natural history film; and any film depicting wholly or principally natural scenery.

There were 13 exempt film categories across the following genres: business; accounting; professional; scientific; educational; current affairs; hobbyist; sporting; family; live performance; musical presentation; religious; and community or cultural.

Of the exempt film categories, eight categories specified that to be exempt the content must be "wholly comprising" that material, for example "a film wholly comprising a musical presentation" or "a film wholly comprising a documentary record of a sporting event".

This will result in more streamlined, pragmatic and less legally complex exemption arrangements.

This recommendation amalgamates the current exempt film and computer games categories under the Commonwealth Act and arrangements for film festivals and events.

Simplifying the exemption arrangements that apply to film festivals, by making explicit who may be eligible to exhibit or demonstrate unclassified content under exemption

arrangements and removing the need to apply to the Director for individual formal exemptions, will reduce the regulatory burden on organisers. Access restrictions ensure that children continue to be protected from material that may harm or disturb them.

The section 5B definition is relaxed in such a way that it is unlikely to result in vastly more content being exempted. It is proposed to set the parameters clearly, to limit the type of content that may be exempt - "mainly or principally comprised" being the new suggested minimum threshold for the exempt category. Likewise, the extra categories clarify and expand on the type of content that was originally intended to be exempt.

Any content that might be classified higher than PG will still need to be submitted for classification. This limit is sensible and necessary given that this content may be distributed to the wider public (including children) via the mainstream marketplace. The prohibition on unclassified content that may be offensive to adults, that is, content classified or likely to be classified X 18+ or RC (Refused Classification) will also be retained.

The section 5B exempt categories of content are, by their nature, low risk in terms of classification regulation. This is supported by the absence of complaints in relation to section 5B exempt categories of content (no formal complaints have been received by either the Classification Branch of the Attorney General's Department or the Classification Board in the past five years).

A separate exemptions scheme operates for film festivals. This applies when an application is made, to the Director, to hold a film festival. Under state and territory classification enforcement legislation the Director may direct that the respective Act does not apply to, or in relation to, content that would otherwise usually be required to be classified.

It will not apply to the extent of, and subject to, any condition specified in that direction. It is these state and territory provisions that allow film festivals and special events to screen unclassified films. The film festivals scheme is legally convoluted and complex for festival operators to navigate.

The Australian Law Reform Commission recommendation aligns film festival exemption arrangements with section 5B exemptions to the extent that if content is eligible for an exemption, an application to obtain an exemption is not necessary. That is, the onus would be on the festival operator or the cultural institution to determine if content is eligible to be exempt and, if so, comply with any relevant conditions as set out in the Commonwealth Classification Act and guidelines.

Simplifying exemptions for festivals and cultural institutions has garnered considerable support from the arts and related sectors.

Consistent with the principle that good regulatory practice seeks to reduce the administrative and regulatory burden on industry and individuals, where regulatory intervention is not clearly justifiable, these reforms will provide greater flexibility for a range of material to be exempt. This will be content that is either required to be classified (because it falls just outside the section 5B definition) or required to be formally exempted from state and territory classification laws in response to a written

application. Providing for exemptions from classification and minimising the regulatory and administrative processes associated with meeting eligibility conditions is a way that the Government can continue to support the arts and cultural sector.

Parts 2 and 3 of this Bill make the consequential amendments necessary for these reforms.

These reforms at the federal level are an important step in modernising and streamlining the classification system in Australia. I am excited that this Government has been able to play a role in implementing them. The Bill before us today amends the Tasmanian Act in relation to matters such as sale, display, distribution and exhibition of material so that Tasmanian law accurately reflects the system that is put in place by the Commonwealth Act.

Madam Speaker, I commend the Bill to the House.