



Australian Capital Territory

# **Publications Control Act 1989**

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## **About this republication**

### **The republished law**

This is a republication of the *Publications Control Act 1989* effective 28 May 1993 to 10 October 1994.

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Australian Capital Territory

**PUBLICATIONS CONTROL ACT 1989**

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Australian Capital Territory

## **PUBLICATIONS CONTROL ACT 1989**

An Act to provide for the control of publications and for related purposes

### **PART I—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Publications Control Act 1989*.<sup>1</sup>

#### **Commencement**

2. This Act commences on such date as is fixed by the Minister by notice in the *Gazette*.<sup>1</sup>

#### **Interpretation**

3. In this Act, unless the contrary intention appears—

“adult” means a person of or above the age of 18 years;

“advertising matter”, in relation to a film—

(a) means—

- (i) a trailer or an extract from, or part of, the film;
- (ii) a slide or photograph; or
- (iii) a poster, sketch, program or other printed matter;

prepared for the purpose of giving publicity to the film; and

- (b) where the film is intended to be made available for exhibition, display, sale, letting on hire or distribution to the public—

includes any written or pictorial matter displayed on, or comprised in, a container or wrapping used to enclose the film;

“approved” means approved under the Classification Ordinance;

“Category 1 restricted publication” means a publication classified as such;

“Category 2 restricted publication” means a publication classified as such;

“Censorship Board” means the Censorship Board established under the Film Regulations;

“Classification Ordinance” means the *Classification of Publications Ordinance 1983*;

“classify” means classify under the Classification Ordinance;

“Court” means the Magistrates Court;

“determined markings”, in relation to a film, means the markings determined under subsection 35 (5) of the Classification Ordinance in relation to the classification given to that film;

“film” includes a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image can be produced;

“Films Regulations” means the Customs (Cinematograph Films) Regulations made and in force from time to time under the *Customs Act 1901* of the Commonwealth;

“ ‘G’ film” means a film classified as such;

“ ‘M’ film” means a film classified as such;

“ ‘MA’ film” means a film classified as such;

“minor” means a person under the age of 18 years;

“objectionable child publication” means an objectionable publication of the kind referred to in paragraph (b) of the definition of “objectionable publication”;

“objectionable publication” means an unclassified publication, or advertising matter in relation to a film, being advertising which is not approved, that—

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult person;

- (b) depicts in pictorial form a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person;
- (c) promotes, incites or instructs in matters of crime or violence;  
or
- (d) has been refused classification or approval, as the case requires;

“offence” means an offence against this Act or the regulations;

“ ‘PG’ film” means a film classified as such;

“prescribed markings” means the markings prescribed in the Classification of Publications Regulations;

“prescribed person or body” means a person or body prescribed in the Classification of Publication Regulations;

“public place” means any premises, street, road, footpath, public park within the meaning of the *Public Parks Act 1928*, reserve or other place which the public is entitled to use or which is open to, or used by, the public whether on payment of money or otherwise;

“publication” means any book, paper, magazine, film or other written or pictorial matter that is made available, or is intended to be made available, for exhibition, display, sale, letting on hire or distribution to the public, but does not include advertising matter in relation to a film;

“publish” includes sell, let on hire, exhibit, display and distribute;

“restricted publications area” means any premises, or part of any premises, constructed, conducted and managed in accordance with the requirements prescribed in the Regulations;

“Review Board” means the Film and Literature Board of Review established under the Film Regulations;

“ ‘R’ film” means a film classified as such;

“sell” means sell by retail or exchange and includes an agreement or offer to sell or exchange;

“ ‘X’ film” means a film classified as such.

**Application**

4. Nothing in this Act applies to, or in relation to, a film that—
- (a) is registered under the Films Regulations; or
  - (b) has been produced in Australia by or on behalf of an Australian television station.

**PART II—OFFENCES*****Division 1—Unclassified publications*****Sale etc. of objectionable publications**

5. A person shall not advertise, sell, let on hire or distribute an objectionable publication.

Penalty:

- (a) in the case of an objectionable child publication—\$2,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$1,000 or imprisonment for 6 months, or both.

**Possession of objectionable publications**

6. A person shall not possess an objectionable publication for the purpose of publishing it.

Penalty:

- (a) in the case of an objectionable child publication—\$2,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$1,000 or imprisonment for 6 months, or both.

**Keeping objectionable publications at premises**

7. The occupier of any premises shall not keep or permit to be kept at those premises an objectionable publication for the purpose of publishing it.

Penalty:

- (a) in the case of an objectionable child publication—\$2,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$1,000 or imprisonment for 6 months, or both.



**Exhibition or display of objectionable publications**

**8.** A person shall not exhibit or display an objectionable publication in a public place, or in such a manner that it is visible to persons in or on a public place.

Penalty:

- (a) in the case of an objectionable child publication—\$2,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$1,000 or imprisonment for 6 months, or both.

**Depositing objectionable publications in public places**

**9.** A person shall not deposit, or cause to be deposited, an objectionable publication in or on a public place.

Penalty:

- (a) in the case of an objectionable child publication—\$2,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$1,000 or imprisonment for 6 months, or both.

**Depositing objectionable publications on private premises**

**10.** A person shall not deposit, or cause to be deposited, an objectionable publication in or on private premises without the occupier's permission.

Penalty:

- (a) in the case of an objectionable child publication—\$2,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$1,000 or imprisonment for 6 months, or both.

**Producing objectionable child publications**

**11.** A person shall not print or otherwise make or produce an objectionable child publication for the purpose of publishing it.

Penalty: \$2,000 or imprisonment for 12 months, or both.

**Sale, hire and distribution of video tapes and discs**

**12. (1)** A person shall not sell, let on hire or distribute a video tape or video disc that has not been classified or that has been refused classification.

**Penalty:**

- (a) in the case of an unclassified video tape or video disc that is subsequently classified as a “G” film—\$100;
- (b) in the case of an unclassified video tape or video disc that is subsequently classified as a “PG” film—\$200;
- (c) in the case of an unclassified video tape or video disc that is subsequently classified as a “M” film—\$400;
- (ca) in the case of an unclassified video tape or video disc that is subsequently classified as an “MA” film—\$500;
- (d) in the case of an unclassified video tape or video disc that is subsequently classified as a “R” film—\$600;
- (e) in the case of an unclassified video tape or video disc that is subsequently classified as a “X” film—\$800;
- (f) in the case of a video tape or video disc that has been refused classification pursuant to subsection 25 (3) or paragraph 25 (4) (b) of the Classification Ordinance or that was, at the time of the offence, unclassified and that is subsequently refused classification pursuant to that subsection or paragraph—\$1,000 or imprisonment for 6 months, or both; and
- (g) in the case of a video tape or video disc that has been refused classification pursuant to paragraph 25 (4) (a) of the Classification Ordinance or that was, at the time of the offence, unclassified and that is subsequently refused classification pursuant to that paragraph—\$2,000 or imprisonment for 12 months, or both.

(2) Proceedings for an offence under subsection (1) in relation to a video tape or video disc that is unclassified at the time of the alleged offence shall not be instituted until the tape or disc has been classified or refused classification.

**Advertisement of unclassified video tapes and discs**

**13.** A person shall not advertise an unclassified video tape or video disc.

Penalty: \$100.

**Unclassified publications—false markings**

**14.** A person shall not sell, let on hire or distribute an unclassified publication if the publication, or the container or wrapping in which the publication is sold, let on hire or distributed, bears prescribed markings,

determined markings, or any other mark or matter that indicates that the publication is classified.

Penalty: \$500 or imprisonment for 3 months, or both.

**Objectionable publications—general character**

**15. (1)** For the purpose of determining whether a publication or advertising matter in relation to a film is an objectionable publication, the Court shall have regard to the general character of the publication or advertising.

**(2)** Subsection (1) does not apply to a publication that has been refused classification, or to advertising matter in relation to a film, being advertising that has been refused approval.

**Exemption of literary etc. works**

**16. (1)** The Court shall not find a publication or advertising matter in relation to a film to be an objectionable publication if it possesses literary or artistic merit or is of a medical, legal or scientific character unless the Court is satisfied that the conduct of the person alleged to have committed an offence against a provision of this Division in relation to the publication or advertising was not justified in the circumstances, having regard, in particular, to the persons or classes of persons into whose hands the publication or advertising was intended or was likely to come.

**(2)** Subsection (1) does not apply to or in relation to—

- (a) a publication that has been refused classification;
- (b) advertising matter in relation to a film, being advertising that has been refused approval; or
- (c) a publication or advertising matter in relation to a film, being a publication or advertising that is of a kind referred to in paragraph (b) or (c) of the definition of “objectionable publication” in section 3.

**Subsequent classification**

**17.** A person shall not be convicted of an offence against a provision of this Division in relation to an objectionable publication, other than a video tape or video disc, if the person establishes that—

- (a) in the case of a publication—
  - (i) since the offence was alleged to have been committed the publication has been classified; and

- (ii) the act alleged to constitute the offence did not infringe any of the conditions set out in section 19, other than the conditions relating to prescribed markings or determined markings, that would have been applicable to the publication had it been so classified at the time when the act was done; or
- (b) in the case of advertising matter in relation to a film—since the offence was alleged to have been committed, the advertising has been approved.

***Division 1A—Advertising matter for unclassified films***

**Interpretation**

**17A. (1)** In this Division—

“eligible film” means a film that complies with conditions determined, from time to time, by the Attorney-General of the Commonwealth and published in the *Gazette*;

“relevant person”, in relation to a film, means the distributor or exhibitor of the film.

**(2)** A reference in this Division to a film shall be read as a reference to a film intended for public exhibition, other than an exempt film for the purposes of section 4A of the *Film Classification Act 1971*.

**Advertising matter**

**17B. (1)** A person shall not publish or cause to be published advertising matter relating to a film that—

- (a) has not been classified; or
- (b) has been refused classification;

unless a certificate of exemption has been issued in relation to that film.

**(2)** A person who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a natural person—\$3,000; or
- (b) if the offender is a body corporate—\$15,000.

**(3)** For the purposes of this section, an advertisement published by a person at the request of another person shall be taken to be an advertisement published by that other person, and by that other person only.

### **Exemption**

**17C. (1)** Subject to subsection (3), a relevant person—

- (a) may at any time; and
- (b) shall if so required in writing by the Censorship Board;

apply in writing to the Censorship Board for a certificate of exemption in relation to a film.

(2) The Censorship Board may require an applicant for a certificate of exemption to submit for approval a copy of all advertising matter relating to the film that is the subject of an application for a certificate of exemption.

(3) The Censorship Board shall not accept an application for a certificate of exemption unless such an application is made to the Board under the law of each State and the Northern Territory that corresponds to this Division.

### **Power to grant certificates of exemption**

**17D. (1)** The Censorship Board may, by notice in writing, grant a certificate of exemption in relation to a film that is an eligible film.

(2) The Censorship Board shall refuse to grant a certificate of exemption if, in the opinion of the Board, the film is likely to be classified as an “R” or an “X” film.

### **Number of applications**

**17E.** The Censorship Board shall not, without the consent of the Attorney-General of the Commonwealth, approve more than 30 applications for certificates of exemption, in any calendar year.

### **Conditions for granting certificates of exemption**

**17F.** The grant of a certificate of exemption under this Division is subject to such conditions as are determined from time to time by the Attorney-General of the Commonwealth, for the purposes of this section, and published in the *Gazette*.

### **Failure to comply with conditions**

**17G.** The Censorship Board may revoke a certificate of exemption granted under this Division if at any time the use of advertising matter fails to comply with a condition determined under section 17F.

**Review of decisions**

**17H. (1)** Subject to subsection (3), an applicant for a certificate of exemption may apply in writing to the Review Board for a review of a decision of the Censorship Board under subsection 17D (1).

**(2)** On review, the Review Board may—

- (a) confirm a decision of the Censorship Board; or
- (b) substitute its own decision for the decision of the Censorship Board.

**(3)** The Review Board may not review a decision refusing to grant a certificate of exemption where—

- (a) the film that the certificate of exemption relates to is an eligible film; and
- (b) the decision of the Censorship Board was made pursuant to section 17E.

***Division 2—Classified publications*****Publishing Category 1 and 2 restricted publications and “MA”, “R” and “X” films**

**18.** A person shall not publish—

- (a) a Category 1 or a Category 2 restricted publication; or
- (b) an “MA”, “R” or “X” film;

otherwise than in accordance with the conditions set out in section 19 which are applicable to that publication.

Penalty: \$500 or imprisonment for 3 months, or both.

**Conditions of publication applying to Category 1 and 2 restricted publications and “MA”, “R” and “X” films**

**19. (1)** The following conditions apply in relation to a publication that is classified as a Category 1 restricted publication:

- (a) the publication shall not, without reasonable excuse, be sold, let on hire or delivered to a minor, other than by a parent or guardian of that minor;
- (b) the publication shall not be exhibited or displayed for sale or hire in a public place unless the publication is contained in a sealed package;

- (c) where the sealed package referred to in paragraph (b) is made of transparent material—the publication shall bear the prescribed markings;
- (d) where the sealed package referred to in paragraph (b) is made of opaque material—both the publication and the package shall bear the prescribed markings.

**(1A)** The following conditions apply in relation to an “MA” film:

- (a) the film shall not, without reasonable excuse, be sold, let on hire or delivered to a person under the age of 15 years, other than by a parent or guardian of that person;
- (b) the film shall not be exhibited or displayed in a public place unless the container, wrapping and casing in which the film is contained bear the determined markings.

**(2)** The following conditions apply in relation to an “R” film:

- (a) the film shall not, without reasonable excuse, be sold, let on hire or delivered to a minor, other than by a parent or guardian of that minor;
- (b) the film shall not be exhibited or displayed in a public place unless the container, wrapping and casing in which the film is contained bear the determined markings.

**(3)** The following conditions apply in relation to an “X” film or a publication that is classified as a Category 2 restricted publication:

- (a) the publication shall not, without reasonable excuse, be sold, let on hire or delivered to a minor, other than by a parent or guardian of that minor;
- (b) the publication shall not be exhibited or displayed, except in a restricted publications area;
- (c) the publication shall not be sold, let on hire or exhibited, displayed or delivered for or on sale or hire unless the publication bears the prescribed or determined markings, as the case requires;
- (d) the publication shall not be delivered to a person who has not made a direct request for the publication;
- (e) the publication shall not be delivered to a person unless it is contained in a package made of plain opaque material;

- (f) in relation to an “X” film—the film shall not be published otherwise than on premises in a prescribed area;
- (g) in relation to an “X” film—the film shall not be published to a person unless—
  - (i) that person produces or provides a document that the publisher believes on reasonable grounds to be the person’s driving licence, birth certificate or passport, or a copy thereof, and that document indicates that the person was born at least 18 years ago; or
  - (ii) the publisher otherwise has reasonable grounds for believing that that person is an adult.

(4) In subparagraph (3) (g) (i)—

“birth certificate” means the original or a certified copy of a certificate or other official record of birth, whether that birth occurred in Australia or elsewhere;

“driver’s licence” means a licence to drive a motor vehicle issued under a law of the Territory, a State, another Territory or a place outside Australia;

“passport” includes a document of identity issued from official sources, whether in or outside Australia.

### **Assisting a minor to obtain an “X” film**

**19A. (1)** A person shall not assist or encourage a minor to obtain an “X” film.

Penalty: \$500 or imprisonment for 3 months, or both.

**(2)** A person shall not be convicted of an offence against subsection (1) if evidence is adduced that the person—

- (a) is the parent or guardian of the relevant minor; or
- (b) has reasonable grounds for believing that the relevant minor is an adult;

and that evidence is not rebutted.



**Depositing Category 1 and 2 restricted publications and “MA”, “R” and “X” films in public places**

**20.** A person shall not deposit, or cause to be deposited—

- (a) a Category 1 or a Category 2 restricted publication; or
- (b) an “MA”, “R” or “X” film;

in or on a public place.

Penalty: \$1,000 or imprisonment for 6 months, or both.

**Depositing Category 1 and 2 restricted publications and “MA”, “R” and “X” films on private premises**

**21.** A person shall not deposit, or cause to be deposited—

- (a) a Category 1 or a Category 2 restricted publication; or
- (b) an “MA”, “R” or “X” film;

in or on private premises without the occupier’s permission.

Penalty: \$1,000 or imprisonment for 6 months, or both.

**Video tapes and discs—trailers**

**22.** A classified video tape or video disc shall not be sold, let on hire, exhibited or displayed for sale or hire in a public place or exhibited or displayed in a public place if, after classification, it has been edited to include a trailer advertising another film, unless—

- (a) in the case of a video tape, or a video disc, that is a “G” film—the advertised film is a “G” film;
- (b) in the case of a video tape, or a video disc, that is a “PG” film—the advertised film is a “G” or “PG” film;
- (c) in the case of a video tape, or a video disc, that is an “M” film—the advertised film is a “G”, “PG” or “M” film;
- (ca) in the case of a video tape, or a video disc, that is an “MA” film—the advertised film is a “G”, “PG”, “M” or “MA” film;
- (d) in the case of a video tape, or a video disc, that is an “R” film—the advertised film is a “G”, “PG”, “M”, “MA” or “R” film; or

- (e) in the case of a video tape, or a video disc, that is an “X” film—the advertised film is an “X” film.

Penalty: \$500 or imprisonment for 3 months, or both.

**Video tapes and discs—false advertisement of classification**

**23.** A person shall not publish advertising matter in relation to a classified video tape or video disc that indicates that the tape or disc is not classified or is differently classified.

Penalty: \$100.

**Exhibiting or displaying “G”, “PG” and “M” video tapes and discs in public places**

**24.** A person shall not exhibit, or display, in a public place a video tape or a video disc that is a “G”, “PG” or “M” film in a container, wrapping or casing that does not bear the determined markings.

Penalty: \$200.

**“G”, “PG” and “M” films other than video tapes and discs—false markings**

**25.** A person shall not sell, let on hire or distribute a film, other than a video tape or video disc, that is a “G”, “PG” or “M” film if the film, or the container or wrapping in which the film is sold, let on hire or distributed, bears any mark or matter indicating that the film is not so classified, or that the film is differently classified.

Penalty: \$500 or imprisonment for 3 months, or both.

**Display of information about classification**

**26. (1)** A person who sells, lets on hire or distributes a classified film shall keep displayed, in accordance with subsection (2), a notice about classifications in the form determined by the Chief Censor by notice published in the *Gazette*.

Penalty: \$500 or imprisonment for 3 months, or both.

**(2)** A notice referred to in subsection (1) shall be displayed on premises open to the public for the purposes of the sale, hire or distribution of the classified film, in a conspicuous place where, and in such a form that, the notice may be conveniently read by any person on the premises.

**(3)** In subsection (1), “Chief Censor” means the person appointed as such under the Films Regulations.

***Division 3—Miscellaneous***

**Advertising matter**

**27. (1)** A person shall not sell, let on hire or distribute a film in association with advertising matter that has been refused approval.

Penalty: \$500 or imprisonment for 3 months, or both.

**(2)** A person shall not publish approved advertising matter in relation to a film except in accordance with the conditions (if any) to which the approval is subject.

Penalty: \$500 or imprisonment for 3 months, or both.

**(3)** A person shall not publish sexually explicit advertising matter in relation to an “X” film unless—

- (a) it is contained within a sealed package made of plain opaque material bearing the words—

“WARNING: SEXUALLY EXPLICIT ADVERTISING”

or words to that effect, prominently displayed on its outside; and

- (b) that package is contained within another sealed package made of plain opaque material.

Penalty: \$500 or imprisonment for 3 months, or both.

**(4)** In subsection (3)—

“sexually explicit advertising matter” means advertising matter that explicitly depicts or describes sexual acts or fetishes.

**Restricted publications areas**

**28. (1)** A person who is in charge of, or who has the management or control of, a restricted publications area shall not permit a minor to enter that area.

Penalty: \$500 or imprisonment for 3 months, or both.

**(2)** A person who is in charge of a restricted publications area shall cause a notice in the prescribed form to be displayed in a prominent place on or near each entrance to the area, so that it is clearly visible from outside the area.

Penalty: \$500 or imprisonment for 3 months, or both.

**(3)** A person who is in charge of, or who has the management or control of, a restricted publications area shall not, in that area, screen or cause or permit to

be screened an “R” film or an “X” film, other than by means of a slot-machine operated by a coin or token.

Penalty: \$500 or imprisonment for 3 months, or both.

(4) A person shall not be convicted of an offence against subsection (1) if evidence is adduced that the person believed on reasonable grounds that the person in relation to whom the offence is alleged to have been committed was an adult, and that evidence is not rebutted.

### **Conduct of directors, servants and agents**

29. (1) Where, in proceedings for an offence, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(3) Where, in proceedings for an offence, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show—

- (a) that a servant or agent of the person had that state of mind; and
- (b) that the conduct was engaged in by the servant or agent within the scope of his or her actual or apparent authority.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where—

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

**(6)** A reference in subsection (1) or (3) to the state of mind of a person includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

**(7)** A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

### **Corporations—penalties**

**30.** Where a body corporate is convicted of an offence, the penalty that the Court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the Court could impose as a pecuniary penalty for that offence.

## **PART III—ENFORCEMENT**

### **Interpretation**

**31. (1)** In this Part—

“place” includes vacant land, premises, a vehicle, a vessel or an aircraft;

“publication” includes advertising matter in relation to a film.

**(2)** For the purposes of this Part, a thing is connected with a particular offence if—

- (a) the offence has been committed with respect to it;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or it is intended to be used, for the purpose of committing the offence.

**(3)** A reference in this Part to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or will be, committed.

(4) Where a police officer is authorised under this Part to enter a place, and enters that place, a reference in this Part to the occupier of such a place shall include a reference to a person reasonably believed by the police officer to be the occupier, or to be in charge, of that place.

### **Search and seizure**

**32.** A police officer may enter any place, and may search for and seize any thing that he or she believes on reasonable grounds to be connected with an offence that is found on or in the place if, and only if, the search and seizure is made by the police officer—

- (a) after obtaining the consent of the occupier of the place to the entry; or
- (b) in pursuance of a warrant issued under this Part.

### **Consent to search**

**33. (1)** Before obtaining the consent of a person for the purpose of section 32, a police officer shall inform the person that he or she may refuse to give consent.

(2) A police officer who obtains the consent of a person for the purposes of section 32 shall ask the person to sign an acknowledgement—

- (a) that the person has been informed that he or she may refuse to give consent;
- (b) that the person has given consent; and
- (c) of the date on which, and the time at which, the person gave consent.

(3) Where it is material, in any proceedings, for the Court to be satisfied of the consent of a person for the purposes of section 32, and an acknowledgement in accordance with subsection (2) has not been produced in evidence, the Court shall presume that the person did not give such consent, but that presumption is rebuttable.

### **Search warrants**

**34. (1)** Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that, on the day on which, or a day within 28 days after the date on which, the information is laid, there is or will be a thing or things of a particular kind connected with a particular offence on or in a place, and the information sets out those grounds, the Magistrate may issue a search warrant authorising a police officer named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the place;
- (b) to search the place for things of that kind; and
- (c) to seize any thing of that kind found upon the place that the police officer believes on reasonable grounds to be connected with that offence.

(2) A Magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant issued under subsection (1) shall state or set out—

- (a) the purpose for which the warrant is issued, including a reference to the nature of the offence in relation to which the entry and search are authorised;
- (b) whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things authorised to be seized;
- (d) the conditions (if any) to which the warrant is subject; and
- (e) a date, not being later than 28 days after the date of issue of the warrant, upon which the warrant will cease to have effect.

(4) If, in the course of searching, in accordance with a warrant issued under subsection (1), for things connected with a particular offence, being things of a kind specified in the warrant, a police officer finds any thing that he or she believes on reasonable grounds—

- (a) to be connected with the offence, although not of a kind specified in the warrant; or
- (b) to be connected with another offence;

and he or she believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating either offence, the warrant shall be deemed to authorise him or her to seize that thing.

**Forfeiture of objectionable publications**

**35. (1)** Where a person is charged with an offence in relation to an objectionable publication and the Court is satisfied that the person committed the offence, the Court may order the publication to be forfeited to the Territory.

**(2)** Where a publication has been lawfully seized by a police officer as an objectionable publication but no person has been charged with an offence in respect of that publication, a Magistrate shall, on the application of a police officer made within 60 days after the seizure of the publication, issue a summons requiring the occupier of the premises from which the publication was seized, or the person from whom it was seized, or both, as the Magistrate determines, to appear before the Court and show cause why the publication seized should not be forfeited to the Territory.

**(3)** Where the Magistrate issues a summons under subsection (2) in relation to a publication, he or she shall, so far as he or she considers it reasonably practicable to do so, cause notice of the proceedings to be given to every person whose name appears on the publication as the author, publisher, printer, manufacturer or owner of the publication.

**(4)** In proceedings under this section, the Court may permit a person who claims to be the author, publisher, printer, manufacturer or owner of the publication to which the proceedings relate (whether or not a notice has been given to the person under subsection (3)) and who appears or is represented in the proceedings to intervene in the proceedings for the purpose of maintaining that the publication is not objectionable.

**(5)** Upon the hearing of the summons issued under subsection (2), the Court shall—

- (a)** if it is satisfied that there was a contravention of a provision of this Act in respect of the publication and that it is desirable that the publication should be forfeited to the Territory—order the publication to be forfeited to the Territory; or
- (b)** if it is not so satisfied—order that the publication be delivered to the person appearing to the Court to have been entitled to possession of the publication immediately before its seizure.

**(6)** Subject to subsection (7), a publication which is forfeited to the Territory under this section may be destroyed or otherwise dealt with, as directed by the Minister.



(7) Where the Court has ordered a publication to be forfeited to the Territory, the Minister shall not direct the destruction of the publication before the expiration of the time allowed for instituting an appeal against the order, or, if an appeal is lodged within that time, before the determination of the appeal.

### **Return of seized publications**

**36. (1)** Where a person is charged with an offence, the Court shall, after hearing the matter, order that any publication to which the prosecution relates that has been seized be delivered to the person appearing to the Court to have been entitled to possession of the publication immediately before the seizure.

(2) Subsection (1) does not apply to a publication forfeited to the Territory under subsection 35 (1).

(3) Where a publication has been lawfully seized by a police officer from a place entered in accordance with this Part and, at the expiration of 60 days after the seizure—

- (a) no person has been charged with an offence in respect of the publication; and
- (b) no summons has been issued under subsection 35 (2) in respect of the publication;

the publication shall be returned to the person from whom it was seized or to the occupier of that place.

### **Evidence**

**37. (1)** In any proceedings for an offence, a certificate signed or purporting to be signed by the Chief Censor, the Acting Chief Censor, the Deputy Chief Censor or the Acting Deputy Chief Censor and stating that—

- (a) a film has been classified or refused classification;
- (b) a film has not been classified;
- (c) advertising matter in relation to a film has been approved or refused approval; or
- (d) advertising matter in relation to a film has not been approved;

is evidence of the matters stated in the certificate.

(2) In subsection (1), “Chief Censor”, “Acting Chief Censor”, “Deputy Chief Censor” or “Acting Deputy Chief Censor” means the person appointed as such under the Films Regulations.

**PART V—MISCELLANEOUS****Exemptions**

**38. (1)** The regulations may exempt a specified person or body from specified provisions of this Act, subject to specified conditions (if any).

**(2)** Notwithstanding anything in this Act, it is not an offence for a person—

- (a) to publish to a prescribed person or body a Category 1 or Category 2 restricted publication or an “MA”, “R” or “X” film;
- (b) to publish to a prescribed person or body a video tape or video disc that is unclassified or that has been refused classification; or
- (c) to do any act or thing that falls within the scope of a prescribed exemption under subsection (1) and is done in accordance with the conditions (if any) to which the exemption is subject.

**Regulations**

**39.** The Executive may make regulations, not inconsistent with this Act, prescribing—

- (a) all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act; and
  - (b) penalties for offences against the regulations not exceeding—
    - (i) in the case of a body corporate—\$1,000; and
    - (ii) in the case of an individual—\$200.
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# NOTE

1. The *Publications Control Act 1989* as shown in this reprint comprises Act No. 47, 1989 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

**Table of Ordinances**

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Publications Control Ordinance 1989</i>	47, 1989	10 May 1989	10 May 1989 (see <i>Gazette</i> 1989, No. S161)	

## Self-Government day 11 May 1989

Table 2

**Table of Acts**

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Publications Control (Amendment) Act 1990</i>	15, 1990	21 June 1990	Ss. 1 and 2: 21 June 1990 Remainder: 1 July 1990	S. 8
<i>Self-Government (Consequential Amendments) Act 1991</i>	53, 1991	2 Oct 1991	2 Oct 1991	S. 11
<i>Publications Control (Amendment) Act 1991</i>	72, 1991	7 Nov 1991	7 Nov 1991	—
<i>Statute Law Revision (Miscellaneous Provisions) Act 1993</i>	1, 1993	1 Mar 1993	1 Mar 1993	—
<i>Publications Control (Amendment) Act 1993</i>	26, 1993	21 May 1993	Ss. 1-3: 21 May 1993 Remainder: 28 May 1993 (see <i>Gazette</i> 1993, No. S94, p. 2)	—

**NOTE**—continued**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 3 .....	am. Act No. 72, 1991; No. 26, 1993
S. 12 .....	am. Act No. 26, 1993
Div. 1A of Part II (ss. 17A-17H)	ad. Act No. 72, 1991
Ss. 17A-17G .....	ad. Act No. 72, 1991
S. 17H.....	ad. Act No. 72, 1991 am. No. 1, 1993
S. 18 .....	am. Act No. 26, 1993
S. 19 .....	am. Act No. 15, 1990; No. 26, 1993
S. 19A.....	ad. Act No. 15, 1990
Ss. 20, 21.....	am. Act No. 26, 1993
S. 22 .....	am. Act No. 15, 1990; No. 26, 1993
S. 27 .....	am. Act No. 15, 1990
Ss. 35, 36.....	am. Act No. 53, 1991
S. 38 .....	am. Act No. 26, 1993
S. 39 .....	am. Act No. 53, 1991