

PUBLICATIONS CONTROL (AMENDMENT) BILL 1990

EXPLANATORY MEMORANDUM

The Classification of Publications Ordinance 1983 provides for the classification of publications and for the use and distribution of publications, whether classified or not.

In the Ordinance, "publication" is defined to mean 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. "Film" is defined to include a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image can be produced.

Under the Ordinance, films may be classified, according to criteria specified in the Act, as "G" films, "PG" films, "M" films, "R" films, or "X" films, or they may be refused classification.

A film is to be classified as an "R" film or an "X" film if the Censorship Board decides that a film

- (a) 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;

OR (b) is not suitable for viewing by a minor.

The proposed Bill does not change the basis of classification but it does change the consequences of classification for those films which are given an "X" classification. The purpose of the proposed Bill is to remove from "X" films the current entitlements to distribution and to apply to those films the provisions of the Publications Control Act 1989 relating to objectionable publications. This will have the result that "X" films will not be able to be:

- (a) advertised, sold, offered for sale, hired or distributed; or
- (b) kept in possession for the purpose of sale or publication; or
- (c) exhibited or displayed in a public place or in such a manner as to be visible to persons in a public place.
- (d) deposited in a public place, or except with the permission of the occupier, on private premises.

It is anticipated that the greatest impact of the proposed Act will be to prohibit the sale and hire of "X" rated videos in and from the Australian Capital Territory.

NOTES ON CLAUSES

Clause 1 Short title

This clause provides that the short title of the Act is "Publications Control (Amendment) Act 1990".

Clause 2 Principal Act

This clause provides that in the Act, "Principle Act" means the Publications Control Act 1989.

Clause 3 Interpretation

This clause amends the definition of "objectionable publication" in section 3 of the Principal Act to provide that, for the purposes of the Principal Act, "objectionable publication" will now include a film classified as an "X" film. It also restructures the numbering of subclauses from (a) (b) (c) (d) to (a) and (b) (i) (ii) (iii) (iv).

Clause 4 Possession of objectionable publications

This clause amends section 6 of the Principal Act to create the legal presumption that, if a person has possession of 5 or more objectionable publications, the person has possession of them for the purpose of sale. This presumption may be rebutted by a defendant.

Clause 5 Keeping objectionable publications at premises

This clause amends section 7 of the Principal Act to create the legal presumption that, if the occupier of premises keeps or permits to be kept 5 or more objectionable publications, the occupier keeps or permits them to be kept for the purpose of selling them or otherwise publishing them (that is, distributing them by way of sale or otherwise). This presumption may be rebutted by a defendant.

Clause 6 Making objectionable child publications

This clause amends section 11 of the Principal Act to create the legal presumption that, if a person prints or otherwise produces 5 or more copies of an "objectionable child publication," the person does so for the purpose of selling or otherwise publishing them (that is, distributing them by way of sale or otherwise). This presumption may be rebutted by a defendant.

An "objectionable child publication" is an objectionable publication that 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.

Clause 7 Penalties for sale etc of video tapes and discs

Subclause (a) is a grammatical correction. As a consequence of clause 3 above, subclause (b) amends paragraph (e) of section 12 of the Principal Act to make it consistent with paragraph (f) by increasing the penalty for dealing in an unclassified video subsequently classified as an "X" film from \$800 to \$1000 or imprisonment for six months or both.

Clause 8 Objectionable publications – general character

As a consequence of clause 3 above, this clause changes the existing subsection (2) of section 15 of the Principal Act by expanding it to include an "X" film.

Clause 9 Exemption of literary etc works

As consequences of clause 3 above, subclause (a) exempts from the considerations of subsection (1) of section 16 of the Principal Act (artistic and literary merit etc) an "X" film, while subclause (b) is a purely grammatical change due to restructuring of subclause numbering.

Clause 10 Subsequent classification of publications

This clause amends paragraph 17 of the Principal Act to provide that the defence under this provision will not apply in relation to an objectionable publication which is unclassified at the time of the commission of the alleged offence if it is subsequently classified as an "X" film.

Clause 11 Publishing certain classified publications

As a consequence of clause 3 above, section 18 of the Principal Act is amended by removing the capability to publish an "X" film in accordance with the conditions of section 19 of the Principal Act.

Clause 12 Conditions of publication of certain classified publications.

Due to clause 11 above, the provisions for an "X" film in section 19 of the Principal Act are no longer necessary and are therefore omitted.

Clauses 13 and 14 Depositing certain classified publications

Certain classified publications, though legal in some circumstances, are prohibited by sections 20 and 21 of the Principal Act from being deposited in a public place or on private premises without permission. Due to clause 3 above, the provisions for an "X" film in these sections are no longer necessary.

Clause 15 Video tapes and disc.....trailers

In addition to amending section 18 of the Principal Act to remove a reference to an "X" film as a consequence to the amendments in clause 3 above, this clause corrects an anomaly in the existing Principal Act, whereby "trailers" are not permitted to be added to "G", "PG" or "M" videos. This amendment will ensure that appropriate trailers may be added to all videos.

Clause 16 Restricted publications area

This clause amends section 28 of the Principal Act to remove the current limited entitlement to screen an "X" film by means of a slot-machine in a restricted publications area.

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