

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2004

Contents

| | Page |
|--|------|
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| 3 Legislation amended | 2 |
| 4 Sections 4 and 5 | 2 |
| 5 New sections 5 and 6 | 2 |
| 6 Parts 2 to 5 | 3 |
| 7 Part 6 heading | 52 |
| 8 Definitions for pt 6 Section 54A, definition of registrar | 52 |
| 9 Division 6.2 heading | 53 |
| 10 Section 54B etc | 53 |

Contents

| | | Page |
|----|--|------|
| 11 | Variation of conditions Section 54K (3) | 53 |
| 12 | Section 54K | 53 |
| 13 | Sections 54L and 54M | 54 |
| 14 | Sections 54P and 54Q | 55 |
| 15 | Meaning of X film for div 6.4 Section 54T | 56 |
| 16 | Section 54V | 56 |
| 17 | Powers of entry, search etc Section 54W and (3) (a) and (c) | 57 |
| 18 | Section 54W (4) | 57 |
| 19 | Section 54YB etc | 58 |
| 20 | Sections 62 and 63 | 58 |
| 21 | Publication to prescribed person or body Section 65 (a) | 59 |
| 22 | Dictionary, new definition of <i>at</i> | 59 |
| 23 | Dictionary, definition of <i>guardian</i> | 60 |
| 24 | Dictionary, definitions of <i>influential person</i> , <i>licence</i> , <i>registrar</i> and <i>X film</i> | 60 |

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2004

A Bill for

An Act to amend the *Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

The Legislative Assembly for the Australian Capital Territory enacts as
follows:

2004 087B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2004*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*.

4 Sections 4 and 5

renumber as sections 3 and 4

5 New sections 5 and 6

in part 1, insert

5 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

6 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Parts 2 to 5

substitute

Part 2 Films

Division 2.1 Exhibition of films

7 Exhibition of film in public place

(1) A person commits an offence if—

- (a) the person exhibits a film in a public place; and
- (b) the film is not classified.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) A person commits an offence if the person exhibits a classified film in a public place—

- (a) with a title other than the title under which the film is classified; or

(b) in a form other than the form in which the film is classified.

Maximum penalty: 50 penalty units.

8 Exhibition of films—display of notice about classifications

(1) A person commits an offence if—

(a) the person exhibits a film in a public place; and

(b) the person does not display a notice—

(i) in the approved form about classifications for films; and

(ii) in the public place so that the notice is clearly visible to the public.

Maximum penalty: 5 penalty units.

Note The notice is approved by the director of the board (see dict, def *approved form*).

(2) An offence against this section is a strict liability offence.

9 Exhibition of RC and X 18+ films

(1) A person commits an offence if—

(a) the person exhibits a film in a public place; and

(b) the film is classified RC.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) A person commits an offence if—

(a) the person exhibits a film in a public place; and

(b) the film is classified X 18+; and

(c) the public place is not a restricted publications area that is located in premises in an area prescribed by regulation.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

10 Exhibition of unclassified, RC, X 18+, R 18+ and MA 15+ films

(1) A person commits an offence if—

(a) the person exhibits a film somewhere that is not a controlled space for exhibiting the film; and

(b) the film is—

(i) classified RC, X 18+, R 18+ or MA 15+; or

(ii) an unclassified film; and

(c) for an unclassified film—the film is subsequently classified RC, X 18+, R 18+ or MA 15+.

Maximum penalty:

(a) for a film classified RC, or an unclassified film that is subsequently classified RC—100 penalty units, imprisonment for 1 year or both; or

(b) for a film classified X 18+, or an unclassified film that is subsequently classified X 18+—50 penalty units, imprisonment for 6 months or both; or

(c) for a film classified MA 15+ or R 18+, or an unclassified film that is subsequently classified MA 15+ or R 18+—20 penalty units.

(2) Absolute liability applies to subsection (1) (c).

1 (3) This section does not apply if the film is an unclassified film and the
2 person does not believe, and has no reasonable grounds for
3 believing, that the film would be classified RC, X 18+, R 18+ or
4 MA 15+.

5 (4) In this section:

6 *controlled space*, for exhibiting a film, means a space where the
7 person exhibiting the film—

8 (a) can prevent someone entering the space; and

9 (b) can prevent the film being seen from outside the space.

10 **11 Attendance of child at certain films—offence by parents**
11 **etc**

12 (1) A person commits an offence if—

13 (a) the person is a parent or guardian of a child; and

14 (b) the person permits the child to attend the exhibition of a film in
15 a public place; and

16 (c) the person knows the film is—

17 (i) classified RC, X 18+ or R 18+; or

18 (ii) an unclassified film; and

19 (d) for an unclassified film—the film is subsequently classified
20 RC, X 18+ or R 18+.

21 Maximum penalty: 20 penalty units.

22 (2) Absolute liability applies to subsection (1) (d).

23 (3) This section does not apply if the film is an unclassified film and the
24 person does not believe, and has no reasonable grounds for
25 believing, that the film would be classified RC, X 18+ or R 18+.

12 Attendance of child at certain films—offence by child

A child commits an offence if—

- (a) the child is 15 years old or older; and
- (b) the child attends the exhibition of a film in a public place; and
- (c) the child knows the film is classified X 18+ or R 18+.

Maximum penalty: 5 penalty units.

13 Private exhibition of certain films in presence of child

(1) A person commits an offence if—

- (a) the person exhibits a film in a place other than a public place; and
- (b) a child is present during any part of the exhibition; and
- (c) the film is—
 - (i) classified RC, X 18+ or R 18+; or
 - (ii) an unclassified film; and
- (d) for an unclassified film—the film is subsequently classified RC, X 18+ or R 18+.

Maximum penalty:

- (a) for a film classified RC, or an unclassified film that is subsequently classified RC—50 penalty units, imprisonment for 6 months or both; or
- (b) for a film classified X 18+, or an unclassified film that is subsequently classified X 18+—50 penalty units; or
- (c) for a film classified R 18+, or an unclassified film that is subsequently classified R 18+—20 penalty units.

- 1 (2) Absolute liability applies to—
2 (a) the circumstance that the person present is a child; and
3 (b) subsection (1) (d).
4 (3) This section does not apply if—
5 (a) the person is a parent or guardian of the child; or
6 (b) the film is an unclassified film and the person does not believe,
7 and has no reasonable grounds for believing, that the film
8 would be classified RC, X 18+ or R 18+.
9 (4) It is a defence to a prosecution for an offence against this section if
10 the defendant proves that the defendant believed on reasonable
11 grounds that the child was an adult.

12 **14 Attendance of child at R 18+ film—offence by exhibitor**

- 13 (1) A person commits an offence if—
14 (a) the person exhibits a film in a public place; and
15 (b) the film is classified R 18+; and
16 (c) a child is present during any part of the exhibition.
17 Maximum penalty: 50 penalty units.
18 (2) Strict liability applies to subsection (1) (b).
19 (3) Absolute liability applies to the circumstance that the person present
20 is a child.
21 (4) It is a defence to a prosecution for an offence against this section if
22 the defendant proves that—
23 (a) the child produced to the defendant acceptable proof of age
24 before the child was admitted to the public place; and
25 (b) the defendant believed on reasonable grounds that the child
26 was an adult.

15 Attendance of child at MA 15+ film—offence by exhibitor

- (1) A person commits an offence if—
- (a) the person exhibits a film in a public place; and
 - (b) the film is classified MA 15+; and
 - (c) a child under 15 years old is present during any part of the exhibition; and
 - (d) the child is not accompanied by a parent or guardian of the child.

Maximum penalty: 10 penalty units.

- (2) For subsection (1), a child does not stop being accompanied if the parent or guardian is temporarily absent from the exhibition of the film.
- (3) Strict liability applies to subsection (1) (b).
- (4) Absolute liability applies to the circumstance that the person present is a child under 15 years old.
- (5) It is a defence to a prosecution for an offence against this section if the defendant proves that—
- (a) the defendant took all reasonable steps to ensure that the child was not present in contravention of subsection (1); or
 - (b) the defendant believed on reasonable grounds that the child was 15 years old or older; or
 - (c) the defendant believed on reasonable grounds that the person accompanying the child was the child's parent or guardian.

Division 2.2 Sale of films

16 Unclassified and RC films

A person commits an offence if—

- (a) the person sells a film; and
- (b) the film is an unclassified film or a film classified RC.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

17 Classified films

A person commits an offence if the person sells a classified film—

- (a) with a title other than the title under which the film is classified; or
- (b) in a form other than the form in which the film is classified.

Maximum penalty: 50 penalty units.

18 Sale of films—display of notice about classifications

(1) A person commits an offence if—

- (a) the person sells a film at any premises; and
- (b) the person does not display a notice—
 - (i) in the approved form about classifications for films; and
 - (ii) in the premises so that the notice is clearly visible to the public.

Maximum penalty: 5 penalty units.

Note The notice is approved by the director of the board (see dict, def ***approved form***).

(2) An offence against this section is a strict liability offence.

19 Films to display determined markings and consumer advice

(1) A person commits an offence if—

(a) the person sells a film; and

(b) the container, wrapping or casing of the film does not have displayed on it—

(i) the determined markings relevant to the film's classification; and

(ii) if there is current consumer advice for the film—the consumer advice.

Maximum penalty: 10 penalty units.

(2) A person commits an offence if—

(a) the person sells an unclassified film; and

(b) the container, wrapping or casing in which the film is sold displays a marking that suggests that the film has been classified.

Maximum penalty: 30 penalty units.

(3) A person commits an offence if—

(a) the person sells a classified film; and

(b) the container, wrapping or casing in which the film is sold displays a marking that suggests that the film is unclassified or has a different classification.

Maximum penalty: 30 penalty units.

- 1 (4) Subsection (5) applies if—
- 2 (a) a film is reclassified under the Commonwealth Act, section 39
- 3 (Reclassification etc after 2 years) or section 97A
- 4 (Reclassification); or
- 5 (b) the board revokes a classification or consumer advice for a film
- 6 under the Commonwealth Act, section 22B (3) (Classification
- 7 of a publication, film or computer game that may be the same
- 8 as or similar to a classified item).
- 9 (5) A person does not commit an offence against this section in relation
- 10 to the film during the 30-day period after the decision to reclassify
- 11 or revoke takes effect, if the film displays the determined markings
- 12 and consumer advice (if any) applying to the film before the
- 13 reclassification or revocation.
- 14 (6) An offence against this section is a strict liability offence.

15 **20 Possessing unclassified or RC films and other films at**

16 **certain premises**

- 17 (1) A person commits an offence if—
- 18 (a) the person possesses an unclassified film or a film classified
- 19 RC at any premises; and
- 20 (b) classified films are sold at the premises.
- 21 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 22 both.
- 23 (2) A person commits an offence if—
- 24 (a) the person is the occupier of premises; and
- 25 (b) someone else possesses an unclassified film or a film classified
- 26 RC at the premises; and

1 (c) classified films are sold at the premises.

2 Maximum penalty: 100 penalty units, imprisonment for 1 year or
3 both.

4 (3) In this section:

5 *possess* a film includes—

6 (a) have control over the disposition of the film (whether or not
7 having custody of the film); and

8 (b) have joint possession of the film.

9 **21 Display of X 18+ films for sale**

10 (1) A person commits an offence if—

11 (a) the person displays a film classified X 18+ for sale; and

12 (b) the place where the film is displayed for sale is not a restricted
13 publications area that is located in premises in an area
14 prescribed by regulation.

15 Maximum penalty: 50 penalty units, imprisonment for 6 months or
16 both.

17 **22 Sale of X 18+ films**

18 (1) A person commits an offence if—

19 (a) the person sells a film classified X 18+ to someone else; and

20 (b) the other person has not made a direct request for the film.

21 Maximum penalty: 50 penalty units, imprisonment for 6 months or
22 both.

23 (2) A person commits an offence if the person sells a film classified
24 X 18+ that is not contained in a package made of opaque material.

25 Maximum penalty: 30 penalty units.

- 1 (3) An offence against subsection (2) is a strict liability offence.
- 2 (4) A person commits an offence if—
- 3 (a) the person sells or copies a film classified X 18+; and
- 4 (b) the sale or copying is not done in accordance with a licence
- 5 under part 6.
- 6 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 7 both.
- 8 **23 Sale or delivery of certain films to child**
- 9 (1) A person commits an offence if—
- 10 (a) the person sells or delivers a film to a child; and
- 11 (b) the film is—
- 12 (i) classified RC; or
- 13 (ii) an unclassified film; and
- 14 (c) for an unclassified film—the film is subsequently classified
- 15 RC.
- 16 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 17 both.
- 18 (2) Absolute liability applies to—
- 19 (a) the circumstance that the person to whom the film is sold or
- 20 delivered is a child; and
- 21 (b) subsection (1) (c).
- 22 (3) Subsection (1) does not apply if the film is an unclassified film and
- 23 the person does not believe, and has no reasonable grounds for
- 24 believing, that the film would be classified RC.

- 1 (4) It is a defence to a prosecution for an offence against subsection (1)
2 if the defendant proves that—
- 3 (a) the child produced to the defendant acceptable proof of age
4 before the defendant sold or delivered the film to the child; and
- 5 (b) the defendant believed on reasonable grounds that the child
6 was an adult.
- 7 (5) A person commits an offence if—
- 8 (a) the person sells or delivers a film to a child; and
- 9 (b) the film is—
- 10 (i) classified X 18+ or R 18+; or
- 11 (ii) an unclassified film; and
- 12 (c) for an unclassified film—the film is subsequently classified
13 X 18+ or R 18+.
- 14 Maximum penalty: 50 penalty units, imprisonment for 6 months or
15 both.
- 16 (6) Absolute liability applies to—
- 17 (a) the circumstance that the person to whom the film is sold or
18 delivered is a child; and
- 19 (b) subsection (5) (c).
- 20 (7) Subsection (5) does not apply if—
- 21 (a) the person is the parent or guardian of the child; or
- 22 (b) the film is an unclassified film and the person does not believe,
23 and has no reasonable grounds for believing, that the film
24 would be classified X 18+ or R 18+.

- 1 (8) It is a defence to a prosecution for an offence against subsection (5),
2 if the defendant proves—
- 3 (a) that—
- 4 (i) the child produced to the defendant acceptable proof of
5 age before the defendant sold or delivered the film to the
6 child; and
- 7 (ii) the defendant believed on reasonable grounds that the
8 child was an adult; or
- 9 (b) for the delivery of a film classified R 18+—the child was
10 employed by the defendant or the defendant's employer and
11 the delivery took place in the course of that employment.
- 12 (9) A person commits an offence if—
- 13 (a) the person sells or delivers a film to a child under 15 years old;
14 and
- 15 (b) the film is—
- 16 (i) classified MA 15+; or
- 17 (ii) an unclassified film; and
- 18 (c) for a film that is unclassified—the film is subsequently
19 classified MA 15+.
- 20 Maximum penalty: 10 penalty units.
- 21 (10) Absolute liability applies to—
- 22 (a) the circumstance that the person to whom the film is sold or
23 delivered is under 15 years old; and
- 24 (b) subsection (9) (c).

(11) Subsection (9) does not apply if—

- (a) the person is the parent or guardian of the child; or
- (b) the film is an unclassified film and the person does not believe, and has no reasonable grounds for believing, that the film would be classified MA 15+.

(12) It is a defence to a prosecution for an offence against subsection (9) if the defendant proves that the defendant believed on reasonable grounds that—

- (a) the child was 15 years old or older; or
- (b) a parent or guardian of the child had consented to the sale or delivery.

24 Buying certain films—offence by child

A child commits an offence if—

- (a) the child is 15 years old or older; and
- (b) the child buys a film; and
- (c) the child knows the film is classified X 18+ or R 18+.

Maximum penalty: 5 penalty units.

Division 2.3 Miscellaneous

25 Power to ask name, age and address

(1) A police officer may require a person to state the person's name, age and address if the police officer has reasonable grounds for believing that—

- (a) a film is being or is about to be exhibited, sold or delivered to the person; and

- 1 (b) the person has committed or is about to commit an offence
2 against section 12 (Attendance of child at certain films—
3 offence by child) or section 24 (Buying certain films—offence
4 by child); and
- 5 (c) the person is under 18 years old.
- 6 (2) A person commits an offence if the person fails to comply with a
7 requirement made of the person under subsection (1).
- 8 Maximum penalty: 5 penalty units.
- 9 (3) An offence against this section is a strict liability offence.

10 **26 Leaving films in certain places**

- 11 (1) A person commits an offence if—
- 12 (a) the person leaves a film in a public place or, without the
13 occupier's permission, at private premises; and
- 14 (b) the film is—
- 15 (i) classified RC, X 18+, R 18+ or MA 15+; or
- 16 (ii) an unclassified film; and
- 17 (c) for an unclassified film—the film is subsequently classified
18 RC, X 18+, R 18+ or MA 15+.
- 19 Maximum penalty:
- 20 (a) for a film classified RC, or an unclassified film that is
21 subsequently classified RC—100 penalty units, imprisonment
22 for 1 year or both; or
- 23 (b) for a film classified X 18+, or an unclassified film that is
24 subsequently classified X 18+—50 penalty units,
25 imprisonment for 6 months or both; or

1 (c) for a film classified R 18+ or MA 15+, or an unclassified film
2 that is subsequently classified R 18+ or MA 15+—20 penalty
3 units.

4 (2) Absolute liability applies to subsection (1) (c).

5 (3) This section does not apply if the film is an unclassified film and the
6 person does not believe, and has no reasonable grounds for
7 believing, that the film would be classified RC, X 18+, R 18+ or
8 MA 15+.

9 **27 Possessing or copying film**

10 (1) A person commits an offence if—

11 (a) the person possesses—

12 (i) a film classified RC; or

13 (ii) an unclassified film; and

14 (b) the person intends to sell or exhibit the film.

15 Maximum penalty: 100 penalty units, imprisonment for 1 year or
16 both.

17 (2) Subsection (1) does not apply if the person possesses the film for
18 classification or law enforcement.

19 (3) A person commits an offence if—

20 (a) the person copies a film; and

21 (b) the film is—

22 (i) classified RC; or

23 (ii) an unclassified film; and

- 1 (c) the person intends to sell or exhibit the film.
- 2 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 3 both.
- 4 (4) Subsection (3) does not apply if the person copies the film for
- 5 classification or law enforcement.
- 6 (5) If, in a prosecution for an offence against subsection (3), it is proved
- 7 that the defendant made 10 or more copies of a film classified RC,
- 8 or an unclassified film, it is presumed, unless the contrary is proved,
- 9 that the defendant intended to sell or exhibit the film.

10 **Part 3 Publications**

11 **28 Sale of unclassified RC publications**

- 12 (1) A person commits an offence if—
- 13 (a) the person sells or delivers a submittable publication; and
- 14 (b) the person knows that the publication is a submittable
- 15 publication.
- 16 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 17 both.
- 18 (2) A person commits an offence if—
- 19 (a) the person sells or delivers a publication classified RC; and
- 20 (b) the person knows that the publication is a publication classified
- 21 RC.
- 22 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 23 both.

(3) This section does not apply if—

(a) the person sells or delivers the publication for classification or law enforcement; or

(b) the publication was a submittable publication and, since the offence was alleged to have been committed, the publication has been classified unrestricted.

29 Category 1 restricted publications

(1) A person commits an offence if—

(a) the person sells or delivers a publication classified category 1 restricted; and

(b) the publication—

(i) does not display the determined markings; or

(ii) is not contained in a sealed package; and

(c) if the publication is contained in a package made of opaque material—the package does not display the determined markings.

Maximum penalty: 30 penalty units.

(2) However, subsection (1) (b) (ii) does not apply to the sale or delivery of the publication if—

(a) the sale or delivery takes place in a restricted area; and

(b) on delivery, the publication is contained in a package made of opaque material; and

(c) the conditions (if any) imposed by the board under the Commonwealth Act, section 13A (2) (Conditions of certain classifications for publications) are complied with.

(3) An offence against this section is a strict liability offence.

- 1 (4) Subsection (5) applies if—
- 2 (a) a publication is reclassified under the Commonwealth Act,
- 3 section 39 (Reclassification etc after 2 years) or section 97A
- 4 (Reclassification); or
- 5 (b) the board revokes a classification for a publication under the
- 6 Commonwealth Act, section 22B (3) (Classification of a
- 7 publication, film or computer game that may be the same as or
- 8 similar to a classified item).
- 9 (5) A person does not commit an offence against this section in relation
- 10 to the publication during the 30-day period after the decision to
- 11 reclassify or revoke takes effect, if the publication displays the
- 12 determined markings and consumer advice (if any) applying to the
- 13 publication before the reclassification or revocation.

14 **30 Category 2 restricted publications**

- 15 (1) A person commits an offence if—
- 16 (a) the person displays a publication that is classified category 2
- 17 restricted at a place; and
- 18 (b) the place is not a restricted publications area.
- 19 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 20 both.
- 21 (2) A person commits an offence if—
- 22 (a) the person delivers a publication that is classified category 2
- 23 restricted to someone else; and
- 24 (b) the other person has not made a direct request for the
- 25 publication.
- 26 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 27 both.

(3) A person commits an offence if—

(a) the person delivers a publication that is classified category 2 restricted to someone else; and

(b) the publication is not contained in a package made of opaque material.

Maximum penalty: 30 penalty units.

(4) An offence against subsection (3) is a strict liability offence.

(5) A person commits an offence if—

(a) the person publishes a publication that is classified category 2 restricted; and

(b) the publication does not display the determined markings.

Maximum penalty: 30 penalty units.

(6) An offence against subsection (5) is a strict liability offence.

(7) Subsection (8) applies if—

(a) a publication is reclassified under the Commonwealth Act, section 39 (Reclassification etc after 2 years) or section 97A (Reclassification); or

(b) the board revokes a classification for a publication under the Commonwealth Act, section 22B (3) (Classification of a publication, film or computer game that may be the same as or similar to a classified item).

(8) A person does not commit an offence against this section in relation to the publication during the 30-day period after the decision to reclassify or revoke takes effect, if the publication displays the determined markings and consumer advice (if any) applying to the publication before the reclassification or revocation.

31 Sale or delivery of publications contrary to conditions

- (1) A person commits an offence if—
- (a) a publication is classified unrestricted or category 1 restricted; and
 - (b) the classification is subject to a condition imposed under the Commonwealth Act, section 13A (Conditions of certain classifications for publications); and
 - (c) the person sells or delivers the publication; and
 - (d) the sale or delivery is not in accordance with the condition.

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.

32 Consumer advice for unrestricted publications

- (1) A person commits an offence if—
- (a) the board has determined consumer advice for a publication classified unrestricted under the Commonwealth Act, section 20 (2) (Board to decide consumer advice for publications, films and computer games); and
 - (b) the person sells the publication; and
 - (c) the consumer advice is not displayed on the publication or the packaging of the publication.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

33 Publications classified unrestricted

(1) A person commits an offence if—

(a) the person sells, delivers or publishes a publication classified unrestricted; and

(b) the publication does not display the determined markings.

Maximum penalty: 5 penalty units.

(2) An offence against this section is a strict liability offence.

34 Misleading or deceptive markings

(1) A person commits an offence if—

(a) the person publishes an unclassified publication with a marking, or in packaging with a marking; and

(b) the marking indicates or suggests that the publication has been classified.

Maximum penalty: 30 penalty units.

(2) A person commits an offence if—

(a) the person publishes a classified publication with a marking, or in packaging with a marking; and

(b) the marking indicates or suggests that the publication is unclassified or has a different classification.

Maximum penalty: 30 penalty units.

(3) An offence against this section is a strict liability offence.

(4) Subsection (5) applies if—

(a) a publication is reclassified under the Commonwealth Act, section 39 (Reclassification etc after 2 years) or section 97A (Reclassification); or

1 (b) the board revokes a classification for a publication under the
2 Commonwealth Act, section 22B (3) (Classification of a
3 publication, film or computer game that may be the same as or
4 similar to a classified item).

5 (5) A person does not commit an offence against this section in relation
6 to the publication during the 30-day period after the decision to
7 reclassify or revoke takes effect, if the publication displays the
8 determined markings and consumer advice (if any) applying to the
9 publication before the reclassification or revocation.

10 **35 Sale of restricted publications to child**

11 (1) A person commits an offence if—

12 (a) the person sells or delivers a publication to a child; and

13 (b) the publication is classified RC or is a submittable publication.

14 Maximum penalty: 100 penalty units, imprisonment for 1 year or
15 both.

16 (2) Absolute liability applies to the circumstance that the person to
17 whom the publication is sold or delivered is a child.

18 (3) Subsection (1) does not apply if—

19 (a) the person is a parent or guardian of the child; or

20 (b) the publication was a submittable publication and, since the
21 offence was alleged to have been committed, the publication
22 has been classified unrestricted.

23 (4) A person commits an offence if—

24 (a) the person sells or delivers a publication to a child; and

- 1 (b) the publication is classified category 1 restricted or category 2
2 restricted.

3 Maximum penalty: 50 penalty units, imprisonment for 6 months or
4 both.

- 5 (5) Absolute liability applies to the circumstance that the person to
6 whom the publication is sold or delivered is a child.

- 7 (6) Subsection (4) does not apply if the person is a parent or guardian of
8 the child.

- 9 (7) It is a defence to a prosecution for an offence against this section if
10 the defendant proves that—

11 (a) the child produced to the defendant acceptable proof of age
12 before the defendant sold or delivered the publication to the
13 child; and

14 (b) the defendant believed on reasonable grounds that the child
15 was an adult.

16 **36 Leaving publications in certain places**

- 17 (1) A person commits an offence if—

18 (a) the person leaves a publication in a public place or, displayed
19 in a way that it can be seen by people in a public place; and

20 (b) the publication is a submittable publication or classified
21 category 1 restricted, category 2 restricted or RC; and

22 (c) the person knows that the publication is a submittable
23 publication or is so classified; and

24 (d) for a publication classified category 1 restricted—

25 (i) the public place is not a shop or stall; and

26 (ii) section 29 (1) is not complied with in relation to the
27 publication; and

- 1 (e) for a publication classified category 2 restricted—the public
2 place is not a restricted publications area.
- 3 Maximum penalty:
- 4 (a) for a publication classified category 1 restricted or category 2
5 restricted, or a submittable publication that is subsequently
6 classified category 1 restricted or category 2 restricted—50
7 penalty units, imprisonment for 6 months or both; or
- 8 (b) for a publication classified RC, or a submittable publication
9 that is subsequently classified RC—100 penalty units,
10 imprisonment for 1 year or both.
- 11 (2) A person commits an offence if—
- 12 (a) the person leaves a publication on private premises, without the
13 occupier's permission; and
- 14 (b) the publication is a submittable publication or classified
15 category 1 restricted, category 2 restricted or RC; and
- 16 (c) the person knows that the publication is a submittable
17 publication or is so classified.
- 18 Maximum penalty:
- 19 (a) for a publication classified category 1 restricted or category 2
20 restricted, or a submittable publication that is subsequently
21 classified category 1 restricted or category 2 restricted—50
22 penalty units, imprisonment for 6 months or both; or
- 23 (b) for a publication classified RC, or a submittable publication
24 that is subsequently classified RC—100 penalty units,
25 imprisonment for 1 year or both.
- 26 (3) This section does not apply if the publication was a submittable
27 publication and, since the offence was alleged to have been
28 committed, the publication has been classified unrestricted.

37 Possessing or copying publication for purpose of publishing

(1) A person commits an offence if—

(a) the person possesses or copies—

(i) a submittable publication; or

(ii) a publication classified RC; and

(b) the person intends to sell the publication or copy.

Maximum penalty:

(a) for a submittable publication—50 penalty units, imprisonment for 6 months or both; or

(b) for a publication classified RC—100 penalty units, imprisonment for 1 year or both.

(2) This section does not apply if—

(a) the person possesses or copies the publication for classification or law enforcement; or

(b) the publication was a submittable publication and, since the offence was alleged to have been committed, the publication has been classified unrestricted, category 1 restricted or category 2 restricted.

(3) If, in a prosecution for an offence against this section, it is proved that the defendant made 10 or more copies of a submittable publication or a publication classified RC, it is presumed, unless the contrary is proved, that the defendant intended to sell the publication.

Part 4 Computer games

38 Sale of computer game or demonstration in public place

(1) A person commits an offence if—

(a) the person—

(i) sells a computer game; or

(ii) demonstrates a computer game in a public place; and

(b) the computer game is not classified.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) A person commits an offence if the person sells a computer game, or demonstrates a computer game in a public place—

(a) with a title other than the title under which the computer game is classified; or

(b) in a form other than the form in which the computer game is classified.

Maximum penalty: 50 penalty units.

39 Computer games—display of notice about classifications

(1) A person commits an offence if—

(a) the person sells or demonstrates a computer game in a public place; and

(b) the person does not display a notice—

(i) in the approved form about classifications for computer games; and

- (ii) in the public place so that the notice is clearly visible to the public.

Maximum penalty: 5 penalty units.

Note The notice is approved by the director of the board (see dict, def *approved form*).

- (2) An offence against this section is a strict liability offence.

40 RC computer games

- (1) A person commits an offence if—

- (a) the person—

(i) sells a computer game; or

(ii) demonstrates a computer game in a public place; and

- (b) the computer game is—

(i) classified RC; or

(ii) an unclassified computer game; and

- (c) for an unclassified computer game—the computer game is subsequently classified RC.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Absolute liability applies to subsection (1) (c).

- (3) This section does not apply if the computer game is an unclassified computer game and the person does not believe, and has no reasonable grounds for believing, that the computer game would be classified RC.

- 1 **41 Demonstration of MA 15+ computer game**
- 2 (1) A person commits an offence if—
- 3 (a) the person demonstrates a computer game classified MA 15+
- 4 in a public place; and
- 5 (b) either—
- 6 (i) the determined markings are not exhibited before the
- 7 computer game can be played; or
- 8 (ii) entry to the public place is not restricted to adults, or
- 9 children accompanied by a parent or guardian while in
- 10 the place.
- 11 Maximum penalty: 20 penalty units.
- 12 (2) An offence against this section is a strict liability offence.
- 13 **42 Demonstration of unclassified, RC and MA 15+ computer**
- 14 **game**
- 15 (1) A person commits an offence if—
- 16 (a) the person demonstrates a computer game somewhere that is
- 17 not a controlled space for demonstrating the computer game;
- 18 and
- 19 (b) the computer game is—
- 20 (i) classified RC or MA 15+; or
- 21 (ii) an unclassified computer game; and

- 1 (c) for an unclassified computer game—the computer game is
 2 subsequently classified RC or MA 15+.
- 3 Maximum penalty:
- 4 (a) for a computer game classified RC or an unclassified computer
 5 game that is subsequently classified RC—100 penalty units,
 6 imprisonment for 1 year or both; or
- 7 (b) for a computer game classified MA 15+ or an unclassified
 8 computer game that is subsequently classified MA 15+—20
 9 penalty units.
- 10 (2) Absolute liability applies to subsection (1) (c).
- 11 (3) This section does not apply if the computer game is an unclassified
 12 computer game and the person does not believe, and has no
 13 reasonable grounds for believing, that the computer game would be
 14 classified RC or MA 15+.
- 15 (4) In this section:
- 16 *controlled space*, for demonstrating a computer game, means a
 17 space where the person demonstrating the computer game—
- 18 (a) can prevent someone entering the space; and
- 19 (b) can prevent the computer game being seen from outside the
 20 space.
- 21 **43 Private demonstration of RC computer games in**
 22 **presence of child**
- 23 (1) A person commits an offence if—
- 24 (a) the person demonstrates a computer game in a place other than
 25 a public place; and
- 26 (b) a child is present during any part of the demonstration; and

- 1 (c) the computer game is—
2 (i) classified RC; or
3 (ii) an unclassified computer game; and
4 (d) for an unclassified computer game—the computer game is
5 subsequently classified RC.
6 Maximum penalty: 50 penalty units.
- 7 (2) Absolute liability applies to—
8 (a) the circumstance that the person present is a child; and
9 (b) subsection (1) (d).
- 10 (3) This section does not apply if—
11 (a) the person is a parent or guardian of the child; or
12 (b) the computer game is an unclassified computer game and the
13 person does not believe, and has no reasonable grounds for
14 believing, that the computer game would be classified RC.
- 15 (4) It is a defence to a prosecution for an offence against this section if
16 the defendant proves that the defendant believed on reasonable
17 grounds that the child was an adult.
- 18 **44 Computer games to display determined markings and**
19 **consumer advice**
- 20 (1) A person commits an offence if—
21 (a) the person sells a computer game: and
22 (b) the container, wrapping or casing of the computer game does
23 not have displayed on it—
24 (i) the determined markings relevant to the computer game's
25 classification; and

- 1 (ii) if there is current consumer advice for the computer
2 game—the consumer advice.

3 Maximum penalty: 10 penalty units.

- 4 (2) A person commits an offence if—

- 5 (a) the person sells an unclassified computer game; and
6 (b) the container, wrapping or casing in which the computer game
7 is sold displays a marking that suggests that the computer game
8 has been classified.

9 Maximum penalty: 30 penalty units.

- 10 (3) A person commits an offence if—

- 11 (a) the person sells a classified computer game; and
12 (b) the container, wrapping or casing in which the computer game
13 is sold displays a marking that suggests that the computer game
14 is unclassified or has a different classification.

15 Maximum penalty: 30 penalty units.

- 16 (4) A person commits an offence if—

- 17 (a) the person makes a computer game available for playing on a
18 pay and play basis (for example, a coin operated arcade game);
19 and
20 (b) the device used for playing the game does not have displayed
21 on it—
22 (i) the determined markings relevant to the computer game's
23 classification; and

- 1 (ii) if there is current consumer advice for the computer
2 game—the consumer advice.

3 Maximum penalty: 10 penalty units.

4 *Note* An example is part of the Act, is not exhaustive and may extend, but
5 does not limit, the meaning of the provision in which it appears (see
6 Legislation Act, s 126 and s 132).

7 (5) If 2 or more computer games are available for playing on a device
8 mentioned in subsection (4), the determined markings and consumer
9 advice to be displayed on the device are those relevant to the
10 computer game with the highest classification under the
11 Commonwealth Act.

12 (6) An offence against this section is a strict liability offence.

13 (7) Subsection (8) applies if—

14 (a) a computer game is reclassified under the Commonwealth Act,
15 section 39 (Reclassification etc after 2 years); or

16 (b) the board revokes a classification or consumer advice for a
17 computer game under the Commonwealth Act, section 22B (3)
18 (Classification of a publication, film or computer game that
19 may be the same as or similar to a classified item).

20 (8) A person does not commit an offence against this section in relation
21 to the computer game during the 30-day period after the decision to
22 reclassify or revoke takes effect, if the computer game displays the
23 determined markings and consumer advice (if any) applying to the
24 computer game before the reclassification or revocation.

45 Possessing unclassified or RC computer games and other computer games

(1) A person commits an offence if—

- (a) the person possesses an unclassified computer game or a computer game classified RC at any premises; and
- (b) classified computer games are sold or demonstrated at the premises.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) A person commits an offence if—

- (a) the person is the occupier of premises; and
- (b) someone else possesses an unclassified computer game or a computer game classified RC at the premises; and
- (c) classified computer games are sold or demonstrated at the premises.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(3) In this section:

possess a computer game includes—

- (a) have control over the disposition of the computer game (whether or not having custody of the computer game); and
- (b) have joint possession of the computer game.

- 1 **46 Sale or delivery of certain computer games to child**
- 2 (1) A person commits an offence if—
- 3 (a) the person sells or delivers a computer game to a child; and
- 4 (b) the computer game is—
- 5 (i) classified RC; or
- 6 (ii) an unclassified computer game; and
- 7 (c) for an unclassified computer game—the computer game is
- 8 subsequently classified RC.
- 9 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 10 both.
- 11 (2) Absolute liability applies to—
- 12 (a) the circumstance that the person to whom the computer game
- 13 is sold or delivered is a child; and
- 14 (b) subsection (1) (c).
- 15 (3) Subsection (1) does not apply if the computer game is an
- 16 unclassified computer game and the person does not believe, and
- 17 has no reasonable grounds for believing, that the computer game
- 18 would be classified RC.
- 19 (4) It is a defence to a prosecution for an offence against subsection (1)
- 20 if the defendant proves that—
- 21 (a) the child produced to the defendant acceptable proof of age
- 22 before the defendant sold or delivered the computer game to
- 23 the child; and
- 24 (b) the defendant believed on reasonable grounds that the child
- 25 was an adult.

- 1 (5) A person commits an offence if—
2 (a) the person sells or delivers a computer game to a child under
3 15 years old; and
4 (b) the computer game is—
5 (i) classified MA 15+; or
6 (ii) an unclassified computer game; and
7 (c) for an unclassified computer game—the computer game is
8 subsequently classified MA 15+.
- 9 Maximum penalty: 20 penalty units.
- 10 (6) Absolute liability applies to—
11 (a) the circumstance that the person to whom the computer game
12 is sold or delivered is under 15 years old; and
13 (b) subsection (5) (c).
- 14 (7) Subsection (5) does not apply if—
15 (a) the person is the parent or guardian of the child; or
16 (b) the computer game is an unclassified computer game and the
17 person does not believe, and has no reasonable grounds for
18 believing, that the computer game would be classified
19 MA 15+.
- 20 (8) It is a defence to a prosecution for an offence against subsection (5)
21 if the defendant proves that the defendant believed on reasonable
22 grounds that—
23 (a) the child was 15 years old or older; or
24 (b) a parent or guardian of the child had consented to the sale or
25 delivery.

47 Leaving computer games in certain places

(1) A person commits an offence if—

(a) the person leaves a computer game in a public place or, without the occupier's permission, at private premises; and

(b) the computer game is—

(i) classified RC or MA 15+; or

(ii) an unclassified computer game; and

(c) for an unclassified computer game—the computer game is subsequently classified RC or MA 15+.

Maximum penalty:

(a) for a computer game classified RC, or an unclassified computer game that is subsequently classified RC—100 penalty units, imprisonment for 1 year or both; or

(b) for a computer game classified MA 15+, or an unclassified computer game that is subsequently classified MA 15+—20 penalty units.

(2) Absolute liability applies to subsection (1) (c).

(3) This section does not apply if the computer game is an unclassified computer game and the person does not believe, and has no reasonable grounds for believing, that the computer game would be classified RC or MA 15+.

48 Possessing or copying computer game for purpose of sale or demonstration

(1) A person commits an offence if—

(a) the person possesses—

(i) a computer game classified RC; or

(ii) an unclassified computer game; and

(b) the person intends to sell or demonstrate the computer game.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) Subsection (1) does not apply if the person possesses the computer game for classification or law enforcement.

(3) A person commits an offence if—

(a) the person copies—

(i) a computer game classified RC; or

(ii) an unclassified computer game; and

(b) the person intends to sell or demonstrate the computer game or the copy.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(4) This section does not apply if, since the offence was alleged to have been committed, the computer game has been classified MA 15+, M, PG or G.

(5) If, in a prosecution for an offence against this section, it is proved that the defendant made 10 or more copies of a computer game classified RC, or an unclassified computer game, it is presumed, unless the contrary is proved, that the defendant intended to sell or exhibit the computer game.

Part 5 Advertisements

49 Certain advertisements not to be published

- (1) A person commits an offence if—
 - (a) the person publishes an advertisement for a film, publication or computer game; and
 - (b) approval for the advertisement—
 - (i) has been refused under the Commonwealth Act, section 29 (Approval of advertisements), or suspended under that Act, section 13 (5) (Applications for classification of publications) or section 21A (Revocation of classification of films or computer games that are found to contain contentious material); or
 - (ii) would be refused under that Act, section 29 if it had been submitted for approval.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person publishes an advertisement for a film, publication or computer game; and
 - (b) the advertisement—
 - (i) is published in a form other than the form in which it is approved under the Commonwealth Act, section 29; or
 - (ii) is not published in accordance with a condition of that approval.

Maximum penalty: 10 penalty units.

50 Certain films, publications and computer games not to be advertised

(1) A person commits an offence if—

- (a) the person publishes an advertisement for an unclassified film; and
- (b) the film has not been granted a certificate of exemption under the Commonwealth Act, section 33 (Granting of certificates of exemption).

Maximum penalty: 50 penalty units.

(2) A person commits an offence if the person publishes an advertisement for—

- (a) a film classified RC; or
- (b) a submittable publication; or
- (c) a publication classified RC; or
- (d) an unclassified computer game; or
- (e) a computer game classified RC.

Maximum penalty: 30 penalty units.

(3) For this section, if a person publishes an advertisement for an unclassified film or an unclassified computer game at the request of someone else, the other person alone is taken to have published it.

(4) An offence against this section is a strict liability offence.

51 Screening advertisements with feature films

- (1) A person commits an offence if—
- (a) the person screens an advertisement for a film in a public place; and
 - (b) the advertisement is screened during a program for the exhibition of another film (the *feature film*); and
 - (c) the feature film has a classification mentioned in column 2 of an item in table 51; and
 - (d) the advertised film does not have a classification mentioned in column 3 of the item.

Table 51

| column 1 item | column 2 feature film | column 3 advertised film |
|------------------|--------------------------|----------------------------------|
| 1 | G | G |
| 2 | PG | PG or G |
| 3 | M | M, PG or G |
| 4 | MA 15+ | MA 15+, M, PG or G |
| 5 | R 18+ | R 18+, MA 15+, M, PG or G |
| 6 | X 18+ | X 18+, R 18+, MA 15+, M, PG or G |

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.

52 Liability of occupier for certain advertisements

(1) A person commits an offence if—

(a) the person is the occupier of a public place that is not a restricted publications area; and

(b) the person screens an advertisement for a film in the public place; and

(c) the advertisement is for—

(i) a film classified MA 15+, and is screened during a program for the exhibition of a film classified M, PG or G; or

(ii) a film classified R 18+, and is screened during a program for the exhibition of a film classified MA 15+, M, PG or G; or

(iii) a film classified X 18+.

Maximum penalty: 30 penalty units.

(2) An offence against this section is a strict liability offence.

53 Sale of feature films with advertisements

(1) A person commits an offence if—

(a) the person sells a film (the *feature film*); and

(b) the feature film is accompanied by an advertisement for another film; and

(c) the feature film has a classification mentioned in column 2 of an item in table 53; and

(d) the advertised film does not have a classification mentioned in column 3 of the item.

Table 53

| column 1 item | column 2 feature film | column 3 advertised film |
|------------------|--------------------------|----------------------------------|
| 1 | G | G |
| 2 | PG | PG or G |
| 3 | M | M, PG or G |
| 4 | MA 15+ | MA 15+, M, PG or G |
| 5 | R 18+ | R 18+, MA 15+, M, PG or G |
| 6 | X 18+ | X 18+, R 18+, M A15+, M, PG or G |

1 Maximum penalty: 30 penalty units.

2 (2) An offence against this section is a strict liability offence.

3 **53A Advertisements with computer games**

4 (1) A person commits an offence if—

5 (a) the person sells or demonstrates a computer game (the *main*
6 *game*) in a public place; and

7 (b) the main game is accompanied by an advertisement for another
8 game; and

9 (c) the main game has a classification mentioned in column 2 of
10 an item in table 53A; and

11 (d) the advertised game does not have a classification mentioned
12 in column 3 of the item.

Table 53A

| column 1 item | column 2 main gam | column 3 advertised computer game |
|--------------------------|------------------------------|--|
| 1 | G | G |
| 2 | PG | PG or G |
| 3 | M | M, PG or G |
| 4 | MA 15+ | MA 15+, M, PG or G |

1 Maximum penalty: 30 penalty units.

2 (2) An offence against this section is a strict liability offence.

3 **53B Advertisement to contain determined markings and**
 4 **consumer advice**

5 (1) A person commits an offence if—

6 (a) the person publishes an advertisement for a classified film, a
 7 classified publication or a classified computer game; and

8 (b) the determined markings relevant to the classification of the
 9 film, publication or computer game, and relevant consumer
 10 advice (if any)—

11 (i) are not contained in the advertisement; or

12 (ii) are not displayed in the way decided by the director
 13 under the Commonwealth Act, section 8 (Markings for
 14 classifications); or

15 (iii) are not clearly visible, having regard to the size and
 16 nature of the advertisement.

17 Maximum penalty: 10 penalty units.

18 (2) An offence against this section is a strict liability offence.

- 1 (3) Subsection (4) applies if—
- 2 (a) a film, publication or computer game is reclassified under the
- 3 Commonwealth Act, section 39 (Reclassification etc after 2
- 4 years) or section 97A (Reclassification); or
- 5 (b) the board revokes a classification or consumer advice for a
- 6 film, publication or computer game under the Commonwealth
- 7 Act, section 22B (3) (Classification of a publication, film or
- 8 computer game that may be the same as or similar to a
- 9 classified item).
- 10 (4) A person does not commit an offence against this section in relation
- 11 to the film, publication or computer game during the 30-day period
- 12 after the decision to reclassify or revoke takes effect, if the film,
- 13 publication or computer game displays the determined markings and
- 14 consumer advice (if any) applying to the film, publication or
- 15 computer game before the reclassification or revocation.

16 **53C Misleading or deceptive advertisements**

- 17 (1) A person commits an offence if—
- 18 (a) the person publishes an advertisement for an unclassified film,
- 19 an unclassified publication, or an unclassified computer game,
- 20 with a marking; and
- 21 (b) the marking indicates or suggests that the film, publication or
- 22 computer game is classified.
- 23 Maximum penalty: 30 penalty units.
- 24 (2) For subsection (1), if a person publishes an advertisement at the
- 25 request of someone else, the other person alone is taken to have
- 26 published it.

(3) A person commits an offence if—

(a) the person publishes an advertisement for a classified film, a classified publication, or a classified computer game, with a marking; and

(b) the marking indicates or suggests that the film, publication or computer game is unclassified or has a different classification.

Maximum penalty: 30 penalty units.

(4) An offence against this section is a strict liability offence.

(5) Subsection (6) applies if—

(a) a film, publication or computer game is reclassified under the Commonwealth Act, section 39 (Reclassification etc after 2 years) or section 97A (Reclassification); or

(b) the board revokes a classification or consumer advice for a film, publication or computer game under the Commonwealth Act, section 22B (3) (Classification of a publication, film or computer game that may be the same as or similar to a classified item).

(6) A person does not commit an offence against subsection (3) in relation to the film, publication or computer game during the 30-day period after the decision to reclassify or revoke takes effect, if the film, publication or computer game displays the determined markings and consumer advice (if any) applying to the film, publication or computer game before the reclassification or revocation.

53D Advertisements for category 1 restricted or category 2 restricted publications

(1) A person commits an offence if—

(a) the person publishes an advertisement for a publication classified category 1 restricted; and

(b) the advertisement is published—

(i) in a publication other than a publication classified category 1 restricted or category 2 restricted; or

(ii) in a place other than a restricted publications area.

Maximum penalty: 30 penalty units.

(2) A person commits an offence if—

(a) the person publishes an advertisement for a publication classified category 2 restricted; and

(b) the advertisement is published—

(i) in a publication other than a publication classified category 2 restricted; or

(ii) in a place other than a restricted publications area.

Maximum penalty: 30 penalty units.

(3) A person commits an offence if—

(a) the person is the occupier of a place other than a restricted publications area; and

(b) an advertisement for a publication classified category 2 restricted is published in the place.

Maximum penalty: 30 penalty units.

(4) An offence against this section is a strict liability offence.

53E Advertisements and X 18+ films

(1) A person commits an offence if—

(a) an advertisement for a film classified R 18+ is published in a publication; and

(b) someone responds to the advertisement; and

(c) the person sells a film classified X 18+ to the other person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person commits an offence if—

(a) the person publishes an advertisement for a film classified X 18+; and

(b) the advertisement explicitly depicts or describes sexual acts or fetishes.

Maximum penalty: 30 penalty units.

(3) For subsection (2), if a person publishes an advertisement at the request of someone else, the other person alone is taken to have published it.

(4) An offence against subsection (2) is a strict liability offence.

(5) Subsection (2) does not apply if—

(a) the advertisement is in a publication that is classified category 2 restricted; and

(b) the publication is contained in a sealed package made of plain opaque material displaying the words ‘WARNING: SEXUALLY EXPLICIT ADVERTISING’, or words to that effect, on the outside of the package; and

(c) the package is contained in another sealed package made of plain opaque material.

- 1 **54** **Classification symbols etc to be published with**
2 **advertisements**
- 3 (1) A person commits an offence if—
- 4 (a) the person publishes a publication containing an advertisement
5 for—
- 6 (i) a film; or
- 7 (ii) a publication classified category 1 restricted or category 2
8 restricted; or
- 9 (iii) a computer game; and
- 10 (b) the publication does not also contain a list of the classification
11 symbols and determined markings for films, publications or
12 computer games respectively.
- 13 Maximum penalty: 5 penalty units.
- 14 (2) An offence against this section is a strict liability offence.

15 **7** **Part 6 heading**

16 *substitute*

17 **Part 6** **X 18+ films**

18 **8** **Definitions for pt 6**
19 **Section 54A, definition of *registrar***

20 *omit*

21 X

22 *substitute*

23 X 18+

1 **9 Division 6.2 heading**

2 *substitute*

3 **Division 6.2 X 18+ film licences**

4 **10 Section 54B etc**

5 *omit from sections 54B, 54C, 54E (1) and 54F*

6 X

7 *substitute*

8 X 18+

9 **11 Variation of conditions**
 10 **Section 54K (3)**

11 *substitute*

12 (3) A licensee must give the licence to the registrar within 28 days after
 13 the day notice under subsection (1) is given to the licensee.

14 Maximum penalty: 20 penalty units.

15 (3A) An offence against this section is a strict liability offence.

16 **12 Section 54K**

17 *renumber subsections when Act next republished under Legislation*
 18 *Act*

13 Sections 54L and 54M

substitute

54L Change of licensed premises

- (1) This section applies if a licensee proposes to—
- (a) sell X 18+ films at premises other than those stated in the licence; or
 - (b) stop selling X 18+ films at particular premises stated in the licence.
- (2) Not later than 28 days before the day of the proposed change, the licensee must give the registrar—
- (a) the licence; and
 - (b) written notice of the proposed change and the proposed date of change.
- Maximum penalty: 20 penalty units.
- (3) The registrar must amend the licence and return it to the licensee within 7 days after the day the registrar receives the licence and notice.
- (4) The licence amendment takes effect on the date stated in the notice.
- (5) An offence against this section is a strict liability offence.

54M Change of activity under a licence

- (1) This section applies if—
- (a) a licensee is authorised under a licence to sell and copy X 18+ films; and
 - (b) the licensee stops selling or copying X 18+ films.

- 1 (2) Within 28 days after the day the licensee stops selling or copying
2 the films, the licensee must give the registrar—
3 (a) the licence; and
4 (b) written notice that the licensee has stopped selling or copying
5 X 18+ films.
6 Maximum penalty: 20 penalty units.
7 (3) The registrar must amend the licence and return it to the licensee
8 within 7 days after the day the registrar receives the licence and
9 notice.
10 (4) An offence against this section is a strict liability offence.

11 **14 Sections 54P and 54Q**

12 *substitute*

13 **54P Surrender of licence**

- 14 (1) Within 7 days after the day a licensee stops selling or copying
15 X 18+ films under a licence, the licensee must surrender the licence
16 by giving the licence and written notice of its surrender to the
17 registrar.
18 Maximum penalty: 20 penalty units.
19 (2) The surrender of the licence takes effect on the day the notice is
20 given to the registrar.
21 (3) An offence against this section is a strict liability offence.

1 **54Q Return of licence**

2 (1) If a licence is cancelled or expires, the licensee must return the
3 licence to the registrar within 7 days after day of the cancellation or
4 expiry.

5 Maximum penalty: 20 penalty units.

6 (2) An offence against this section is a strict liability offence.

7 **15 Meaning of X film for div 6.4**
8 **Section 54T**

9 *omit*

10 X

11 *substitute*

12 X 18+

13 **16 Section 54V**

14 *substitute*

15 **54V Identity cards**

16 (1) The chief executive must give an inspector an identity card stating
17 the person's name and that the person is an inspector.

18 (2) The identity card must show—

19 (a) a recent photograph of the person; and

20 (b) the card's date of issue and expiry; and

21 (c) anything else prescribed by regulation.

22 (3) A person commits an offence if—

23 (a) the person stops being an inspector; and

(b) the person does not return the person's identity card to the chief executive as soon as practicable, but no later than 7 days after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

(4) An offence against this section is a strict liability offence.

(5) Subsection (2) applies only in relation to a card given by the chief executive after the commencement of this section.

(6) Subsection (5) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

(7) Subsections (5) and (6) and this subsection expire on the day they commence.

17 Powers of entry, search etc Section 54W and (3) (a) and (c)

omit

X

substitute

X 18+

18 Section 54W (4)

substitute

(4) A person must not fail to comply with a requirement made of the person under subsection (3) (c) or (d).

Maximum penalty: 50 penalty units.

(5) An offence against this section is a strict liability offence.

19 Section 54YB etc

omit from sections 54YB, 54Z, 54ZA and 54ZB

X, R, MA, M, PG or G

substitute

X 18+, R 18+, MA 15+, M, PG or G

20 Sections 62 and 63

substitute

62 Restricted publications area—offences

- (1) The manager of a restricted publications area commits an offence if a child enters the area.

Maximum penalty: 10 penalty units.

- (2) Absolute liability applies to the circumstance that the person who enters the area is a child.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—

(a) the child produced to the defendant acceptable proof of age before the child entered the area; and

(b) the defendant believed on reasonable grounds that the child was an adult.

- (4) The manager of a restricted publications area commits an offence if—

(a) a film that is classified X 18+ or R 18+ is exhibited in the area; and

(b) the exhibition is other than by way of a slot machine operated by a coin or token.

Maximum penalty: 50 penalty units.

(5) An offence against subsection (4) is a strict liability offence.

63 Certificates as evidence

(1) This section applies if the director or deputy director signs a certificate stating that on a date or during a period stated in the certificate—

(a) a film, publication or computer game was classified, was classified at a classification stated in the certificate or was not classified; or

(b) an advertisement for a film, publication or computer game had been approved, had been refused approval or had not been approved.

(2) The certificate is evidence of the matters stated in it.

(3) Unless the contrary is proved, a document that appears to be a certificate under this section is taken to be such a document.

21 Publication to prescribed person or body **Section 65 (a)**

substitute

(a) a film or computer game classified RC, X 18+, R 18+ or MA 15+; or

22 Dictionary, new definition of *at*

insert

at premises includes in or on the premises.

| | | |
|----|-----------|--|
| 1 | 23 | Dictionary, definition of <i>guardian</i> |
| 2 | | <i>omit</i> |
| 3 | | minor |
| 4 | | <i>substitute</i> |
| 5 | | child |
| 6 | 24 | Dictionary, definitions of <i>influential person, licence, registrar and X film</i> |
| 7 | | |
| 8 | | <i>omit</i> |
| 9 | | X |
| 10 | | <i>substitute</i> |
| 11 | | X 18+ |

Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 2004.
 - 2 Notification**
Notified under the Legislation Act on 2004.
 - 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
-