



AUSTRALIAN CAPITAL TERRITORY

# Publications Control (Amendment) Act 1994

No. 62 of 1994

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## **An Act to amend the *Publications Control Act 1989***

*[Notified in ACT Gazette S197: 11 October 1994]*

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

### **Short title**

1. This Act may be cited as the *Publications Control (Amendment) Act 1994*.

### **Commencement**

2. This Act commences on the day on which it is notified in the *Gazette*.

### **Principal Act**

3. In this Act, “Principal Act” means the *Publications Control Act 1989*.<sup>1</sup>

### **Interpretation**

4. Section 3 of the Principal Act is amended—

- (a) by inserting “or computer game” after “film” (first occurring) in the definition of “advertising matter”;

- (b) by inserting “or game” after “film” in subparagraph (a) (i) of the definition of “advertising matter”;
- (c) by inserting “or game” after “film” (last occurring) in paragraph (a) of the definition of “advertising matter”;
- (d) by inserting “or game” after “film” (wherever occurring) in paragraph (b) of the definition of “advertising matter”;
- (e) by inserting “or computer game” after “film” in the definition of “objectionable publication”;
- (f) by inserting “, computer game” after “film” (first occurring) in the definition of “publication”;
- (g) by inserting “or computer game” after “film” (last occurring) in the definition of “publication”;
- (h) by omitting the definitions of “determined markings” and “publish” and substituting the following definitions:
  - “ ‘determined markings’ means—
    - (a) in relation to a film—the markings determined under subsection 35 (5) of the Classification Ordinance in relation to the classification given to that film; or
    - (b) in relation to a computer game—the markings determined under subsection 35A (6) of the Classification Ordinance in relation to the classification given to that game;
  - ‘publish’—
    - (a) includes sell, let on hire, exhibit, display and distribute; and
    - (b) in relation to a computer game—includes demonstrate;”; and
- (i) by inserting the following definitions:
  - “ ‘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;
  - ‘bulletin board’ means a system of electronically stored information accessible by computer through the use of the telecommunications network;
  - ‘computer game’ has the meaning given by section 3A;

- ‘computer generated image’ means electronically recorded data capable, by means of an electronic device, of being produced on a television screen, liquid crystal display or similar medium as an image (including an image in the form of text);
- ‘computer program’ means a set of statements or instructions to be used directly or indirectly in a computer to bring about a certain result;
- ‘demonstrate’, in relation to a computer game, includes exhibit, display, screen, play or make available for playing;
- ‘driver’s licence’ means a licence to drive a motor vehicle issued under a law applying in Australia or elsewhere;
- ‘entertainment’ includes activity undertaken for the purpose of diversion, recreation, competition or leisure;
- ‘exhibit or display’, in relation to a computer game, includes screen, play, make available for playing or otherwise demonstrate;
- ‘“G” computer game’ means a computer game classified as such;
- ‘“G (8+)” computer game’ means a computer game classified as such;
- ‘“M (15+)” computer game’ means a computer game classified as such;
- ‘“MA (15+)” computer game’ means a computer game classified as such;
- ‘passport’ includes a document of identity issued from official sources, whether in Australia or elsewhere;
- ‘prescribed area’ means an area prescribed by the Classification of Publications Regulations;
- ‘telecommunications network’ means a system, or series of systems, for carrying communications by means of guided or unguided electromagnetic energy or both;”.

### **Insertion**

5. After section 3 of the Principal Act the following section is inserted:

**Interpretation—computer games**

“3A. (1) In this Act, subject to subsection (2)—

‘computer game’ means—

- (a) a computer program, with or without associated data, capable of generating a display on a television screen, liquid crystal display or similar medium; or
- (b) a computer generated image;

intended for the entertainment of the user.

“(2) A reference in this Act to a computer game does not include a reference to—

- (a) a bulletin board; or
- (b) a business, accounting, professional, scientific or educational computer program or computer generated image, unless the program or image contains a computer game which would, if classified, be classified with an ‘MA (15+)’ classification, or be refused classification.”.

**Application**

**6.** Section 4 of the Principal Act is amended by adding at the end the following subsection:

“(2) Nothing in this Act applies to or in relation to a computer game published before the date of commencement of the *Publications Control (Amendment) Act 1994*, unless the game has been classified or refused classification.”.

**Sale etc. of objectionable publications**

**7.** Section 5 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty:

- (a) in the case of an objectionable child publication—\$10,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$5,000 or imprisonment for 6 months, or both.”.

**Possession of objectionable publications**

**8.** Section 6 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty:

- (a) in the case of an objectionable child publication—\$10,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$5,000 or imprisonment for 6 months, or both.”.

**Keeping objectionable publications at premises**

**9.** Section 7 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty:

- (a) in the case of an objectionable child publication—\$10,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$5,000 or imprisonment for 6 months, or both.”.

**Exhibition or display of objectionable publications**

**10.** Section 8 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty:

- (a) in the case of an objectionable child publication—\$10,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$5,000 or imprisonment for 6 months, or both.”.

**Depositing objectionable publications in public places**

**11.** Section 9 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty:

- (a) in the case of an objectionable child publication—\$10,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$5,000 or imprisonment for 6 months, or both.”.

**Depositing objectionable publications on private premises**

**12.** Section 10 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty:

- (a) in the case of an objectionable child publication—\$10,000 or imprisonment for 12 months, or both;
- (b) in any other case—\$5,000 or imprisonment for 6 months, or both.”.

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

**13.** Section 12 of the Principal Act is amended by omitting the penalty at the foot of subsection (1) and substituting the following penalty:

“Penalty:

- (a) in the case of an unclassified video tape or video disc that is subsequently classified as a ‘G’, ‘PG’ or ‘M’ film—\$500;
- (b) in the case of an unclassified video tape or video disc that is subsequently classified as an ‘MA’, ‘R’ or ‘X’ film—\$1,000;
- (c) in the case of a video tape or video disc that has been refused classification pursuant to subsection 25 (3), paragraph 25 (4) (b) or subsection 25 (5) of the Classification Ordinance or that was, at the time of the offence, unclassified and that is subsequently refused classification pursuant to any of those provisions—\$5,000 or imprisonment for 6 months, or both;
- (d) 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—\$10,000 or imprisonment for 12 months, or both.”.

**Insertion**

**14.** After section 12 of the Principal Act the following sections are inserted:

**Sale, hire and distribution of computer games**

“12A. (1) A person shall not sell, let on hire, distribute or demonstrate a computer game that has not been classified or that has been refused classification.

Penalty:

- (a) in the case of an unclassified computer game that is subsequently classified as a ‘G’, ‘G (8+)’ or ‘M (15+)’ computer game—\$500;
- (b) in the case of an unclassified computer game that is subsequently classified as an ‘MA (15+)’ computer game—\$1,000;
- (c) in the case of a computer game that has been refused classification pursuant to subsection 25A (5), paragraph 25A (6) (b) or subsection 25A (7) of the Classification Ordinance or that was, at the time of the offence, unclassified and that is subsequently refused

classification pursuant to any of those provisions—\$5,000 or imprisonment for 6 months, or both;

- (d) in the case of a computer game that has been refused classification pursuant to paragraph 25A (6) (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—\$10,000 or imprisonment for 12 months, or both.

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

“(3) This section does not apply in respect of a computer game determined under subsection 12B (1) to be exempt from the requirements of this section.”.

#### **Exempt computer games**

“12B. (1) The Minister may, by notice in the *Gazette*, determine a computer game or a class of computer games to be exempt from the requirements of section 12A.

“(2) A notice under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

#### **Advertisement of unclassified video tapes, video discs and computer games**

15. Section 13 of the Principal Act is amended—

- (a) by omitting “or video disc” and substituting “, video disc or computer game”; and
- (b) by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty: \$1,000.”.

#### **Objectionable publications—general character**

16. Section 15 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or computer game” after “film”; and
- (b) by inserting in subsection (2) “or computer game” after “film”.

#### **Exemption of literary etc. works**

17. Section 16 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or computer game” after “film”;
- (b) by inserting in paragraph (2) (b) “or computer game” after “film”;  
and
- (c) by inserting in paragraph (2) (c) “or computer game” after “film”.

**Subsequent classification**

18. Section 17 of the Principal Act is amended—

- (a) by omitting “a provision of”; and
- (b) by omitting “or video disc” and substituting ‘, video disc or computer game”.

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

19. Section 18 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty: \$5,000.”.

**Insertion**

20. After section 18 of the Principal Act the following section is inserted:

**Publishing “MA (15+)” computer games**

“18A. A person shall not publish an ‘MA (15+)’ computer game otherwise than in accordance with the conditions set out in section 19AA.

Penalty: \$5,000.”.

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

21. Section 19 of the Principal Act is amended by omitting subsection (4).

**Insertion**

22. After section 19 of the Principal Act the following section is inserted:

**Conditions of publication—“MA (15+)” computer games**

“19AA. The following conditions apply in relation to an ‘MA (15+)’ computer game:

- (a) the game 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 game shall not be demonstrated in a public place unless—
  - (i) the container, wrapping and casing in which the computer game is contained bear the determined markings; and
  - (ii) entry to the place is restricted to adults or persons under the age of 15 years who are in the care of a parent or guardian while in the place.”.

**Assisting minors to obtain “X” films**

**23.** Section 19A of the Principal Act is amended by omitting the penalty at the foot of subsection (1) and substituting the following penalty:

“Penalty: \$2,000.”.

**Depositing restricted publications, films or computer games in public places**

**24.** Section 20 of the Principal Act is amended—

- (a) by omitting from paragraph (a) “or” (last occurring);
- (b) by adding at the end of paragraph (b) “or”;
- (c) by inserting after paragraph (b) the following paragraph:
  - “(c) an ‘MA (15+)’ computer game;”;
- (d) by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty: \$5,000 or imprisonment for 6 months, or both.”.

**Depositing restricted publications, films or computer games on private premises**

**25.** Section 21 of the Principal Act is amended—

- (a) by omitting from paragraph (a) “or” (last occurring);
- (b) by adding at the end of paragraph (b) “or”;
- (c) by inserting after paragraph (b) the following paragraph:
  - “(c) an ‘MA (15+)’ computer game;”;
- (d) by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty: \$5,000.”.

**Video tapes and discs—trailers**

26. Section 22 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty: \$3,000.”.

**Insertion**

27. After section 22 of the Principal Act the following section is inserted:

**Computer games—trailers**

“22A. A classified computer game shall not be sold, let on hire, demonstrated for sale or hire in a public place or demonstrated in a public place if, after classification, it has been modified to include a trailer advertising another computer game, unless—

- (a) in the case of a ‘G’ computer game—the advertised computer game is a ‘G’ game;
- (b) in the case of a ‘G (8+)’ computer game—the advertised computer game is a ‘G’ or ‘G (8+)’ game;
- (c) in the case of an ‘M (15+)’ computer game—the advertised computer game is a ‘G’, ‘G (8+)’ or ‘M (15+)’ game; or
- (d) in the case of an ‘MA (15+)’ computer game—the advertised computer game is classified.

Penalty: \$3,000.”.

**Video tapes, discs and computer games—false advertisement of classification**

28. Section 23 of the Principal Act is amended—

- (a) by omitting “or video disc” and substituting “, video disc or computer game”;
- (b) by omitting “or disc” and substituting “, disc or game”; and
- (c) by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty: \$3,000.”.

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

29. Section 24 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following subsection and penalty:

“(2) A person shall not demonstrate in a public place a ‘G’, ‘G (8+)’ or ‘M (15+)’ computer game in a container, wrapping or casing that does not bear the determined markings.

Penalty: \$1,000.”.

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

30. Section 25 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty: \$3,000.”.

**Display of information about classification**

31. Section 26 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or computer game, or who demonstrates a classified computer game,” after “film”;
- (b) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:  
“Penalty: \$500.”; and
- (c) by omitting from subsection (2) “or distribution of the classified film” and substituting “, distribution or demonstration”.

**Advertising matter**

32. Section 27 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or computer game, or demonstrate a computer game,” after “film”;
- (b) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:  
“Penalty: \$3,000.”;
- (c) by inserting in subsection (2) “or computer game” after “film”;
- (d) by omitting the penalty at the foot of subsection (2) and substituting the following penalty:  
“Penalty: \$1,000.”; and

- (e) by omitting the penalty at the foot of subsection (3) and substituting the following penalty:

“Penalty: \$2,000.”.

### **Restricted publications areas**

**33.** Section 28 of the Principal Act is amended—

- (a) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:

“Penalty: \$1,000.”;

- (b) by omitting the penalty at the foot of subsection (2) and substituting the following penalty:

“Penalty: \$500.”; and

- (c) by omitting the penalty at the foot of subsection (3) and substituting the following penalty:

“Penalty: \$3,000.”.

### **Interpretation**

**34.** Section 31 of the Principal Act is amended by adding at the end of the definition of “publication” in subsection (1) “or computer game”.

### **Evidence**

**35.** Section 37 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “or computer game” after “film”;
- (b) by inserting in paragraph (1) (b) “or computer game” after “film”;
- (c) by inserting in paragraph (1) (c) “or computer game” after “film”;
- and
- (d) by inserting in paragraph (1) (d) “or computer game” after “film”.

### **Exemptions**

**36.** Section 38 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (a) “or an ‘MA’, ‘R’ or ‘X’ film” and substituting “, an ‘MA’, ‘R’ or ‘X’ film or an ‘MA (15+)’ computer game”; and
- (b) by omitting from paragraph (2) (b) “or video disc” and substituting “, video disc or computer game”.

### **Regulations**

**37.** Section 39 of the Principal Act is amended by omitting subparagraphs (b) (i) and (ii) and substituting the following subparagraphs:

- “(i) in the case of a body corporate—\$5,000; and
- (ii) in the case of an individual—\$1,000.”.

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#### **NOTE**

1. Reprinted as at 7 November 1991. See also Acts Nos. 1 and 26, 1993.

*[Presentation speech made in Assembly on 25 August 1994]*

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