



Australian Capital Territory

# **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 No 47**

## **Republication No 2**

Republication date: 30 January 2002

Last amendment made by Act 2001 No 72

Amendments incorporated to 12 September 2001

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* as in force on 30 January 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

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Amendments incorporated to  
12 September 2001



Australian Capital Territory

# **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**

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An Act to provide for the enforcement of a scheme of classification of publications, films and computer games, and for other purposes

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## Part 1 Preliminary

### **U** 1 Short title

This Act may be cited as the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*.

### **U** 2 Dictionary

### **U** 3 Definitions for Act

In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***acceptable proof of age***, in relation to a person, means documentary evidence that might reasonably be accepted as applying to the person and as showing that the person is an adult.

***adult*** means a person who is 18 years of age or older.

***advertisement***—see the Commonwealth Act.

***approved advertisement*** means an advertisement approved under the Commonwealth Act.

***approved form*** means a form approved by the director and published in the *Commonwealth Gazette*.

***board*** means the Classification Board established by the Commonwealth Act, section 45.

***business day*** means a day other than a Saturday, a Sunday or a public holiday under the *Holidays Act 1958*.

***buy*** means buy or exchange or hire, and includes offer to buy or exchange or hire, agree to buy, exchange or hire and cause or permit to be bought or exchanged or hired, whether by retail or wholesale.

***classification certificate*** means a certificate issued under the Commonwealth Act, section 25.

***classified*** means classified under the Commonwealth Act, and includes reclassified under that Act.

***Commonwealth Act*** means the *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth).

***computer game***—see the Commonwealth Act.

***consumer advice*** means consumer advice determined under the Commonwealth Act, section 20.

***court*** means the Magistrates Court.

***demonstrate*** includes exhibit, display, screen or make available for playing.

***deputy director*** means the deputy director of the board.

***determined markings*** means markings determined under the Commonwealth Act, section 8.

***director*** means the director of the board.

***exhibit***, in relation to a film, means project or screen.

***film***—see the Commonwealth Act.

***guardian*** means an adult who is exercising parental control over a minor.

***place*** includes vacant land, premises, a vehicle, a vessel and an aircraft.

***publication***—see the Commonwealth Act.

***public place*** means any place which the public is entitled to use or which is open to or used by the public, whether on payment of money or otherwise.

***publish***—see the Commonwealth Act.

*restricted publications area* means any premises, or part of a premises, constructed and managed in accordance with section 61.

*sell* means sell or exchange or let on hire, and includes offer or display for sale or exchange or hire, agree to sell, exchange or hire and cause or permit to be sold or exchanged or hired, whether by retail or wholesale.

*submittable publication*—see the Commonwealth Act.

*X film* means a film classified X.

#### **4 Exhibition of film**

For this Act, a person is taken to exhibit a film in a public place if the person—

- (a) arranges or conducts the exhibition of the film in the public place; or
- (b) has the superintendence or management of the public place in which the film is exhibited.

#### **U 5 Application**

This Act does not apply to broadcasting services to which the *Broadcasting Services Act 1992* (Cwlth) applies.

## Part 2                      Films

### Division 2.1              Exhibition of films

#### 6              Exhibition of film in public place

- (1) A person shall not, without reasonable excuse, exhibit a film in a public place unless the film is classified.

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

- (2) A person shall not, without reasonable excuse, exhibit a film in a public place unless the film, being classified, is exhibited—

- (a) with the same title as that under which it is classified; and  
(b) in the form, without alteration or addition, in which it is classified.

Maximum penalty: 50 penalty units.

#### **U** 7              Display of notice about classifications

A person shall not, without reasonable excuse, exhibit a film in a public place unless a notice in the approved form about classifications for films is displayed in a prominent place in that 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 s 3, def of *approved form*).

## **8      Exhibition of RC and X films**

- (1) A person shall not, without reasonable excuse, exhibit in a public place a film classified RC.

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

- (2) A person shall not, without reasonable excuse, exhibit in a public place a film classified X except in a restricted publications area located in premises in a prescribed area.

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

## **9      Exhibition of unclassified, RC, X, R and MA films**

A person shall not, without reasonable excuse, exhibit any of the following so that it can be seen from a public place:

- (a) an unclassified film which is subsequently classified RC, X, R or MA;
- (b) a film classified RC, X, R or MA.

Maximum penalty:

- (a) for a film classified MA or R, or an unclassified film which is subsequently classified MA or R—20 penalty units; or
- (b) for a film classified X, or an unclassified film which is subsequently classified X—50 penalty units, imprisonment for 6 months or both; or
- (c) for a film classified RC, or an unclassified film which is subsequently classified RC—100 penalty units, imprisonment for 1 year or both.

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

A person who—

- (a) is a parent or guardian of a minor; and
- (b) knows that a film classified RC, X or R or an unclassified film which is subsequently classified RC, X or R is to be exhibited in a public place;

shall not, without reasonable excuse, permit the minor to attend the exhibition of the film.

Maximum penalty: 20 penalty units.

**11 Attendance of minor at certain films—offence by minor**

A minor who is 15 years of age or older shall not, without reasonable excuse, attend the exhibition in a public place of a film classified X or R, knowing that the film is so classified.

Maximum penalty: 5 penalty units.

**12 Private exhibition of certain films in presence of minor**

- (1) A person shall not exhibit in a place other than a public place, in the presence of a minor a film classified RC, X or R or an unclassified film which is subsequently classified RC, X or R.

Maximum penalty:

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

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that—
- (a) the defendant believed on reasonable grounds that the minor was an adult; or
  - (b) the defendant was the parent or guardian of the minor.

**13 Attendance of minor at R film—offence of exhibitor**

- (1) A person shall not exhibit in a public place a film classified R if a minor is present during any part of the exhibition.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that—
- (a) the minor produced to the defendant acceptable proof of age before the minor was admitted to the public place; or
  - (b) the defendant believed on reasonable grounds that the minor was an adult.

**14 Attendance of minor at MA film—offence of exhibitor**

- (1) A person shall not exhibit in a public place a film classified MA if—
- (a) a minor under 15 years of age is present during any part of the exhibition; and
  - (b) the minor is not accompanied by his or her parent or guardian.

Maximum penalty: 10 penalty units.

- (2) For subsection (1)—
- (a) a minor does not cease to be accompanied if his or her parent or guardian is temporarily absent from the exhibition of the film; and
  - (b) an offence is committed in respect of each unaccompanied minor present at the exhibition of the film.



- (3) It is a defence to a prosecution for an offence against subsection (1) to prove that—
- (a) the defendant took all reasonable steps to ensure that a minor was not present in contravention of subsection (1); or
  - (b) the defendant believed on reasonable grounds that the minor was 15 years of age or over; or
  - (c) the defendant believed on reasonable grounds that the person accompanying the minor was the minor's parent or guardian.

## **Division 2.2                      Sale of films**

### **15      Unclassified and RC films**

A person shall not, without reasonable excuse, sell an unclassified film or a film classified RC.

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

### **16      Classified films**

A person shall not, without reasonable excuse, sell a classified film unless the film is sold—

- (a) under the same title as that under which it is classified; and
- (b) in the form, without alteration or addition, in which it is classified.

Maximum penalty: 50 penalty units.

**U 17      Display of notice about classifications**

A person shall not, without reasonable excuse, sell films on any premises unless a notice in the approved form about classifications for films is displayed in a prominent place on 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 s 3, def of *approved form*).

**U 18      Films to bear determined markings and consumer advice**

- (1) A person shall not, without reasonable excuse, sell a film unless the determined markings relevant to the classification of the film and relevant consumer advice (if any) are displayed on the container, wrapping or casing of the film.

Maximum penalty: 10 penalty units.

- (2) A person shall not, without reasonable excuse, sell an unclassified film if the container, wrapping or casing in which the film is sold bears a marking that indicates or suggests that the film has been classified.

Maximum penalty: 30 penalty units.

- (3) A person shall not, without reasonable excuse, sell a classified film if the container, wrapping or casing in which the film is sold bears a marking that indicates or suggests that the film is unclassified or has a different classification.

Maximum penalty: 30 penalty units.

- (4) If a film is reclassified under the Commonwealth Act, section 39, display of the determined markings and consumer advice applicable to the film before reclassification is sufficient compliance with this section for a period of 30 days after the decision to reclassify takes effect.

## 19 Keeping unclassified or RC films with other films

- (1) If a person keeps or possesses an unclassified film or a film classified RC on any premises where classified films are sold, the person and the occupier of the premises each commit an offence.

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

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant did not know, and could not reasonably have known, that—
- (a) the film was on the premises; or
  - (b) the film was an unclassified film or a film classified RC.

## 20 X films

- (1) If a film is classified X, a person shall not, without reasonable excuse—

- (a) display the film for sale except in a restricted publications area located in premises in a prescribed area; or
- (b) sell the film to a person who has not made a direct request for it; or
- (c) sell the film unless it is contained in a package made of opaque material.

Maximum penalty:

- (a) for paragraph (a) or (b)—50 penalty units, imprisonment for 6 months or both; or
  - (b) for paragraph (c)—30 penalty units.
- (2) A person shall not sell or copy an X film except in accordance with a licence under part 6.

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

## **21     Sale or delivery of certain films to minors**

- (1) A person shall not, without reasonable excuse, sell or deliver to a minor a film classified RC or an unclassified film which is subsequently classified RC.

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

- (2) A person shall not sell or deliver to a minor a film classified X or R or an unclassified film which is subsequently classified X or R, unless the person is a parent or guardian of the minor.

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

- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that—

- (a) the minor produced to the defendant acceptable proof of age before the defendant sold or delivered the film to the minor and the defendant believed on reasonable grounds that the minor was an adult; or
- (b) in the case of the delivery of a film classified R—the minor was employed by the defendant or the defendant's employer and the delivery took place in the course of that employment; or
- (c) the defendant did not know, or could not reasonably have known—
  - (i) the film was classified X or R; or
  - (ii) in the case of an unclassified film which is subsequently classified X or R—it would subsequently be so classified.

- (4) A minor who is 15 years of age or older shall not, without reasonable excuse, buy a film classified X or R knowing that it is so classified.

Maximum penalty: 5 penalty units.

- (5) A person shall not sell or deliver to a minor under 15 years of age a film classified MA or an unclassified film which is subsequently classified MA, unless the person is the parent or guardian of the minor.

Maximum penalty: 10 penalty units.

- (6) It is a defence to a prosecution for an offence against subsection (5) to prove that—
- (a) the defendant believed on reasonable grounds that—
    - (i) the person was 15 years of age or older; or
    - (ii) the parent or guardian of the minor had consented to the sale or delivery; or
  - (b) the defendant did not know, or could not reasonably have known—
    - (i) the film was classified MA; or
    - (ii) in the case of an unclassified film which is subsequently classified MA—it would subsequently be so classified.

## Division 2.3                      Miscellaneous

### **U** 22      Power to demand name, age and address

- (1) If a police officer has reasonable grounds for believing—
- (a) that a person to whom a film is being or is about to be exhibited, sold or delivered has contravened or is about to contravene section 11 or 21 (4); and
  - (b) that the person is under 18 years of age;
- the police officer may demand the person's name, age and address.

- (2) A person shall not give false particulars or fail or refuse to give satisfactory particulars demanded under subsection (1).

Maximum penalty: 5 penalty units.

### **23 Leaving films in certain places**

A person shall not, without reasonable excuse, leave in a public place or, without the occupier's permission, on private premises—

- (a) a film classified RC, X, R or MA; or
- (b) an unclassified film which is subsequently classified RC, X, R or MA;

knowing that the film is, or would be, so classified.

Maximum penalty:

- (a) for a film classified RC, or an unclassified film which is subsequently classified RC—100 penalty units, imprisonment for 1 year or both; or
- (b) for a film classified X, or an unclassified film which is subsequently classified X—50 penalty units, imprisonment for 6 months or both; or
- (c) for a film classified R or MA, or an unclassified film which is subsequently classified R or MA—20 penalty units.

### **24 Possession or copying of film**

- (1) A person shall not possess (other than for the purposes of classification or law enforcement)—

- (a) a film classified RC; or
- (b) an unclassified film;

with the intention of selling or exhibiting the film.

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

(2) A person shall not copy (other than for the purposes of classification or law enforcement)—

- (a) a film classified RC; or
- (b) an unclassified film.

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

(4) In proceedings for an offence against this section, evidence that a person made 10 or more copies of an unclassified film, or a film classified RC, is evidence that the person intended to sell or exhibit the film and, in the absence of evidence to the contrary, is proof of that fact.

## Part 3 Publications

### 25 Sale of unclassified RC publications

(1) A person shall not sell or deliver (other than classification or law enforcement)—

- (a) a submittable publication; or
- (b) a publication classified RC;

knowing that it is such a publication.

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) It is a defence to a prosecution for an offence against subsection (1) (a) to prove that, since the offence was alleged to have been committed, the publication has been classified Unrestricted.

### **U** 26 Category 1 restricted publications

(1) A person shall not, without reasonable excuse, sell or deliver a publication classified Category 1 restricted unless it is contained in a sealed package and—

- (a) if the packaging is a transparent material—the publication bears the determined markings; or
- (b) if the packaging is an opaque material—both the publication and the package bear the determined markings.

Maximum penalty: 30 penalty units.



- (2) If a publication is reclassified under the Commonwealth Act, section 39, it is sufficient compliance with subsection (1) for a period of 30 days after the decision to reclassify takes effect if the publication bears the determined markings applicable to the publication before reclassification.

**U 27 Category 2 restricted publications**

- (1) A person shall not, without reasonable excuse—
- (a) display a publication that is classified Category 2 restricted except in a restricted publications area; or
  - (b) deliver a publication that is classified Category 2 restricted to a person who has not made a direct request for the publication.

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

- (2) A person shall not, without reasonable excuse—
- (a) deliver a publication that is classified Category 2 restricted to a person unless it is contained in a package made of opaque material; or
  - (b) publish a publication that is classified Category 2 restricted unless it bears the determined markings.

Maximum penalty: 30 penalty units.

- (3) If a publication is reclassified under the Commonwealth Act, section 39, it is sufficient compliance with subsection (2) (b) for a period of 30 days after the decision to reclassify takes effect if the publication bears the determined markings applicable to the publication before reclassification.

**U 27A Sale or delivery of publications contrary to conditions**

**U 27B Consumer advice for unrestricted publications**

**28 Publications classified Unrestricted**

A person shall not, without reasonable excuse, sell, deliver or publish a publication classified Unrestricted unless it bears the determined markings.

Maximum penalty: 5 penalty units.

**U 29 Misleading or deceptive markings**

- (1) A person shall not, without reasonable excuse, publish an unclassified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication has been classified.

Maximum penalty: 30 penalty units.

- (2) A person shall not, without reasonable excuse, publish a classified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication is unclassified or has a different classification.

Maximum penalty: 30 penalty units.

- (3) If a publication is reclassified under the Commonwealth Act, section 39, it is sufficient compliance with this section for a period of 30 days after the decision to reclassify takes effect if the publication bears the determined markings applicable to the publication before reclassification.

**30 Sale of restricted publications to minors**

- (1) A person shall not sell or deliver to a minor a publication classified RC or a submittable publication, unless the person is a parent or guardian of the minor.

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

- (2) A person shall not sell or deliver to a minor a publication classified Category 1 restricted or Category 2 restricted, unless the person is a parent or guardian of the minor.

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

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) to prove that—

- (a) that the minor produced to the defendant acceptable proof of age before the defendant sold or delivered the publication to the minor and the defendant believed on reasonable grounds that the minor was an adult; or
- (b) that the defendant did not know, and could not reasonably have known, that the publication was classified Category 1 restricted or Category 2 restricted; or
- (c) in the case of a submittable publication—that, since the offence was alleged to have been committed, the publication has been classified Unrestricted.

**31 Leaving publications in certain places**

- (1) A person shall not leave in a public place or display in such a manner as to be visible to persons in a public place—

- (a) a submittable publication; or

- (b) a publication classified Category 1 restricted, Category 2 restricted or RC;

knowing that it is such a publication.

Maximum penalty:

- (a) for a publication classified Category 1 restricted or Category 2 restricted, or a submittable publication which is subsequently classified Category 1 restricted or Category 2 restricted—50 penalty units, imprisonment for 6 months or both; or
  - (b) for a publication classified RC, or a submittable publication which is subsequently classified RC—100 penalty units, imprisonment for 1 year or both.
- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that—
- (a) since the offence was alleged to have been committed, the publication has been classified Unrestricted; or
  - (b) in the case of a publication classified Category 1 restricted—the public place was a shop or stall and the publication and packaging complied with section 26 (1); or
  - (c) in the case of a publication classified Category 2 restricted—the defendant believed on reasonable grounds that the public place was a restricted publications area.
- (3) A person shall not leave on private premises, without the occupier's permission—
- (a) a submittable publication; or

- (b) a publication classified Category 1 restricted, Category 2 restricted or RC;

knowing that it is such a publication.

Maximum penalty:

- (a) for a publication classified Category 1 restricted or Category 2 restricted, or a submittable publication which is subsequently classified Category 1 restricted or Category 2 restricted—50 penalty units, imprisonment for 6 months or both; or
- (b) for a publication classified RC, or a submittable publication which is subsequently classified RC—100 penalty units, imprisonment for 1 year or both.
- (4) It is a defence to a prosecution for an offence against subsection (3) (a) to prove that, since the offence was alleged to have been committed, the publication has been classified Unrestricted.

### **32 Possession or copying of publication for the purpose of publishing**

- (1) A person shall not possess or copy (other than for the purposes of classification or law enforcement)—
- (a) a submittable publication; or
- (b) a publication classified RC;

with the intention of selling the publication or the 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) It is a defence to a prosecution for an offence against subsection (1) to prove that, since the offence was alleged to have been committed, the publication has been classified Unrestricted, Category 1 restricted or Category 2 restricted.
- (3) In proceedings for an offence against this section, evidence that a person made 10 or more copies of an unclassified publication is evidence that the person intended to sell the publication and, in the absence of evidence to the contrary, is proof of that fact.

## Part 4 Computer games

### 33 Sale or demonstration of computer game in public place

- (1) A person shall not, without reasonable excuse, sell or demonstrate a computer game in a public place unless the computer game is classified.

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

- (2) A person shall not, without reasonable excuse, sell or demonstrate a computer game in a public place unless the computer game—
- (a) is sold or distributed with the same title as that under which it is classified; and
  - (b) is sold or distributed in the form, without alteration or addition, in which it is classified.

Maximum penalty: 50 penalty units.

### **U** 34 Display of notice about classifications

A person shall not, without reasonable excuse, sell or demonstrate a computer game in a public place unless a notice in the approved form about classifications for computer games is displayed in a prominent place in that 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 s 3, def of *approved form*).

**35 RC computer games**

A person shall not, without reasonable excuse—

- (a) sell; or
- (b) demonstrate in a public place;

a computer game classified RC or an unclassified computer game which is subsequently classified RC.

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

**36 MA (15+) computer games**

A person shall not, without reasonable excuse, demonstrate a computer game classified MA (15+) in a public place unless—

- (a) the determined markings are exhibited before the computer game can be played; and
- (b) entry to the place is restricted to adults, or minors who are in the care of a parent or guardian while in the public place.

Maximum penalty: 20 penalty units.

**37 Demonstration of unclassified, RC and MA (15+) computer games**

A person shall not, without reasonable excuse, demonstrate any of the following so that it can be seen from a public place:

- (a) an unclassified computer game which is subsequently classified RC or MA (15+);
- (b) a computer game classified RC or MA (15+).

Maximum penalty:

- (a) for a computer game classified RC or an unclassified computer game which 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 which is subsequently classified MA (15+)—20 penalty units.

**38 Private demonstration of RC computer games in presence of a minor**

- (1) A person shall not demonstrate in a place other than a public place, in the presence of a minor, a computer game classified RC or an unclassified computer game which is subsequently classified RC.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that—
  - (a) the defendant believed on reasonable grounds that the minor was an adult; or
  - (b) the defendant was the parent or guardian of the minor.

**U 39 Computer games to bear determined markings and consumer advice**

- (1) A person shall not, without reasonable excuse, sell a computer game unless the determined markings relevant to the classification of the computer game and relevant consumer advice (if any) are displayed on the container, wrapping or casing of the computer game.

Maximum penalty: 10 penalty units.

- (2) A person shall not, without reasonable excuse, sell an unclassified computer game if the container, wrapping or casing in which the computer game is sold bears a marking that indicates or suggests that the computer game has been classified.

Maximum penalty: 30 penalty units.

- (3) A person shall not, without reasonable excuse, sell a classified computer game if the container, wrapping or casing in which the computer game is sold bears a marking that indicates or suggests

that the computer game is unclassified or has a different classification.

Maximum penalty: 30 penalty units.

- (4) If a computer game is reclassified under the Commonwealth Act, section 39, display of the determined markings and consumer advice applicable to the computer game before classification is sufficient compliance with this section for a period of 30 days after the decision to reclassify takes effect.

**U 40 Keeping unclassified or RC computer games with other computer games**

- (1) If a person keeps or possesses an unclassified computer game or a computer game classified RC on any premises where classified computer games are sold or demonstrated, the person and the occupier of the premises each commit an offence.

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

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant did not know, or could not reasonably have known, that—
- (a) the computer game was on the premises; or
- (b) the computer game was an unclassified computer game or a computer game classified RC.

**41 Sale or delivery of certain computer games to minors**

- (1) A person shall not, without reasonable excuse, sell or deliver to a minor a computer game classified RC or an unclassified computer game which is subsequently classified RC.

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

- (2) A person shall not sell or deliver to a minor who is under 15 years of age a computer game classified MA (15+) or an unclassified computer game which is subsequently classified MA (15+), unless the person is a parent or guardian of the minor.

Maximum penalty: 20 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that—
- (a) the defendant believed on reasonable grounds that—
    - (i) the person was 15 years of age or older; or
    - (ii) the parent or guardian of the minor had consented to the sale or delivery; or
  - (b) the defendant did not know, or could not reasonably have known, that—
    - (i) the computer game was classified MA (15+); or
    - (ii) in the case of an unclassified film which is subsequently classified MA (15+)—it would subsequently be so classified.

#### **42 Leaving computer games in certain places**

A person shall not, without reasonable excuse, leave in a public place or, without the occupier's permission, on private premises—

- (a) a computer game classified RC or MA (15+); or
- (b) an unclassified computer game which is subsequently classified RC or MA (15+);

knowing that the computer game is, or would be, so classified.

Maximum penalty:

- (a) for a computer game classified RC or an unclassified computer game which 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 which is subsequently classified MA (15+)—  
20 penalty units.

**43 Possession or copying of computer game for the purpose of sale or demonstration**

- (1) A person shall not possess (other than for the purposes of classification or law enforcement)—

- (a) a computer game classified RC; or
- (b) an unclassified computer game;

with the intention of selling or demonstrating the computer game.

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

- (2) A person shall not copy (other than for the purposes of classification or law enforcement)—

- (a) a computer game classified RC; or
- (b) an unclassified computer game;

with the intention of selling or demonstrating the computer game or the copy.

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

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) to prove that since the offence was alleged to have been committed the computer game has been classified MA (15+), M (15+), G (8+) or G.

- (4) In proceedings for an offence against this section, evidence that a person made 10 or more copies of an unclassified computer game is evidence that the person intended to sell or demonstrate the computer game and, in the absence of evidence to the contrary, is proof of that fact.

## Part 5 Advertisements

### **U 44 Certain advertisements not to be published**

- (1) A person shall not, without reasonable excuse, publish an advertisement for a film or publication or computer game—
- (a) if the advertisement has not been submitted for approval under the Commonwealth Act, section 29 and, if submitted, would be refused approval; or
  - (b) if the advertisement has been refused approval under the Commonwealth Act, section 29.

Maximum penalty: 50 penalty units.

- (2) A person shall not, without reasonable excuse, publish an advertisement for a film or publication or computer game—
- (a) if the advertisement is approved under the Commonwealth Act, section 29—in an altered form to the form in which it is approved; or
  - (b) if the advertisement is approved under the Commonwealth Act, section 29 subject to conditions—except in accordance with those conditions.

Maximum penalty: 10 penalty units.

### **45 Certain publications, films and computer games not to be advertised**

- (1) A person shall not, without reasonable excuse, publish an advertisement for an unclassified film, other than a film in relation to which a certificate of exemption has been granted the Commonwealth Act, under section 33.

Maximum penalty: 50 penalty units.

- (2) A person shall not, without reasonable excuse, publish 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 another person, that other person alone shall be taken to have published it.

#### **46 Screening of advertisements with feature films**

A person shall not, without reasonable excuse, screen in a public place an advertisement for a film during a program for the exhibition of another film (*the feature film*) unless the feature film has a classification specified in column 2 of an item in the table and the advertised film has a classification specified opposite it in column 3 of that item.

**Table**

<b>item</b>	<b>column 2 feature film</b>	<b>column 3 advertised film</b>
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA	MA, M, PG or G
5	R	R, MA, M, PG or G
6	X	X, R, MA, M, PG or G

Maximum penalty: 30 penalty units.

#### **47 Liability of occupier for certain advertisements**

The occupier of a public place shall not, without reasonable excuse, screen in the public place—

- (a) an advertisement for a film classified R, unless the advertisement was screened during a program for the exhibition of a film classified X or R; or
- (b) an advertisement for a film classified MA, unless the advertisement was screened during a program for the exhibition of a film classified X, R or MA; or
- (c) an advertisement for a film classified X, R or MA, unless the place in which the advertisement was screened was a restricted publications area.

Maximum penalty: 30 penalty units.

**48 Sale of feature films with advertisements**

A person shall not, without reasonable excuse, sell a film (the *feature film*) that is accompanied by an advertisement for another film unless the feature film has a classification specified in column 2 of an item in the table and the advertised film has a classification specified opposite it in column 3 of that item.

**Table**

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	MA, M, PG or G
5	R	R, MA, M, PG or G
6	X	X, R, MA, M, PG or G

Maximum penalty: 30 penalty units.

**49 Advertisements with computer games**

A person shall not, without reasonable excuse, sell, or demonstrate in a public place, a computer game (*the main game*) that is accompanied by an advertisement for another game unless the main game has a classification specified in column 2 of an item in the table and the advertised computer game has a classification specified opposite it in column 3 of that item.



**Table**

<b>item</b>	<b>column 2 main game</b>	<b>column 3 advertised computer game</b>
1	G	G
2	G (8+)	G (8+) or G
3	M (15+)	M (15+), G (8+) or G
4	MA (15+)	MA (15+), M (15+), G (8+) or G

Maximum penalty: 30 penalty units.

**U 50 Advertisement to contain determined markings and consumer advice**

- (1) A person shall not, without reasonable excuse, publish an advertisement for a classified film, a classified publication or a classified computer game unless—
- (a) the advertisement contains the determined markings relevant to the classification of the film, publication or computer game and relevant consumer advice, if any; and
  - (b) the determined markings and consumer advice are displayed—
    - (i) in the manner determined by the director under the Commonwealth Act, section 8; and
    - (ii) so as to be clearly visible, having regard to the size and nature of the advertisement.

Maximum penalty: 10 penalty units.

- (2) If a film, publication or computer game is reclassified under the Commonwealth Act, section 39, display of the determined markings and consumer advice applicable to the film, publication or computer

game before reclassification is sufficient compliance with subsection (1) for a period of 30 days after the decision to reclassify takes effect.

**U 51 Misleading or deceptive advertisements**

- (1) A person shall not, without reasonable excuse, publish an advertisement for an unclassified film, an unclassified publication or an unclassified computer game with a marking that indicates or suggests that the film, publication or computer game is classified.

Maximum penalty: 30 penalty units.

- (2) A person shall not, without reasonable excuse, publish an advertisement for a classified film, classified publication or classified computer game with a marking that indicates or suggests that the film, publication or computer game is unclassified or has a different classification.

Maximum penalty: 30 penalty units.

- (3) If a film, publication or computer game is reclassified under the Commonwealth Act, section 39, publication of the determined markings applicable to the film, publication or computer game before reclassification is sufficient compliance with subsection (2) for a period of 30 days after the decision to reclassify takes effect.

**52 Advertisements for Category 1 restricted or Category 2 restricted publications**

- (1) A person shall not, without reasonable excuse, publish an advertisement for a publication classified Category 1 restricted except in a publication classified Category 1 restricted, Category 2 restricted or in a restricted publications area.

Maximum penalty: 30 penalty units.

- (2) A person shall not, without reasonable excuse, publish an advertisement for a publication classified Category 2 restricted

except in a publication classified Category 2 restricted or in a restricted publications area.

Maximum penalty: 30 penalty units.

- (3) If an advertisement of a publication classified Category 2 restricted is published in a place other than a restricted publications area, the occupier of the place commits an offence.

Maximum penalty: 30 penalty units.

**U 53 Advertisements and X films**

- (1) If—

- (a) an advertisement for a film classified R is published in a publication; and
- (b) a film classified X is sold to a person responding to the advertisement;

the person who, without reasonable excuse, sells the film commits an offence.

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

- (2) A person shall not, without reasonable excuse, publish an advertisement for a film classified X if the advertisement explicitly depicts or describes sexual acts or fetishes.

Maximum penalty: 30 penalty units.

- (3) Subsection (2) does not apply if—

- (a) the advertisement is contained in a sealed package made of plain opaque material bearing the words ‘WARNING: SEXUALLY EXPLICIT ADVERTISING’, or words to the like effect, prominently displayed on the outside of the package; and

- (b) the package referred to in paragraph (a) is contained in another sealed package made of plain opaque material.

**54 Classification symbols etc to be published with advertisements**

A person shall not, without reasonable excuse, publish a publication containing an advertisement for—

- (a) a film; or  
(b) a publication classified Category 1 restricted or Category 2 restricted; or  
(c) a computer game;

unless the publication also contains a list of the classification symbols and determined markings for films, publications or computer games respectively.

Maximum penalty: 5 penalty units.

## Part 6 X films

### Division 6.1 Preliminary

#### **U** 54A Interpretation

(1) In this part:

*influential person*, in relation to a body corporate, means—

- (a) a director or secretary of the body; or
- (b) a person who is—
  - (i) substantially concerned in the management of the body; or
  - (ii) able to control, or to substantially influence, the body's activities or internal affairs.

*licence* means a licence granted under section 54E.

*registrar* means the Registrar of X Film Licences under section 54B.

(2) A reference in this part to an offence against this Act shall be read as including a reference to an offence under the *Crimes Act 1900*, part 9.

### Division 6.2 X film licences

#### 54B Registrar of X Film Licences

- (1) There shall be a Registrar of X Film Licences.
- (2) The chief executive shall create and maintain an office in the public service the duties of which include performing the functions of the Registrar of X Film Licences.
- (3) The registrar shall be a public servant for the time being performing the duties of the public service office referred to in subsection (2).

### **54C Application for X film licence**

A person may apply for a licence to sell or copy, or to sell and copy, X films.

*Note 1* A fee may be determined under s 67 (Determination of fees) for this section.

*Note 2* If a form is approved by the registrar under s 68 (Approved forms—registrar) for an application, the form must be used.

### **54D Further information on licence application**

The registrar may, by written notice, require an applicant for a licence to provide, in writing or orally, such further information relating to the application as is specified in the notice.

### **U 54E Grant or refusal of licence**

- (1) The registrar shall, on application in accordance with section 54C—
  - (a) grant a licence to sell or copy, or to sell and copy, X films; or
  - (b) refuse to grant a licence to sell or copy, or to sell and copy, X films.
- (2) The registrar may impose conditions on the grant of a licence.
- (3) The conditions which the registrar may impose are those which the registrar believes on reasonable grounds are necessary in the public interest.
- (4) For the purposes of making a decision under subsection (1) or (2), the registrar shall have regard to the following:
  - (a) if the applicant is a natural person—whether he or she is an undischarged bankrupt;
  - (b) if the applicant is a body corporate—whether it is being wound up;

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- (c) whether the applicant has contravened this Act, the *Publications Control Act 1989* or the *Business Franchise (“X” Videos) Act 1990*;
- (d) whether the applicant has been convicted of an offence punishable on conviction—
- (i) in the case of a natural person—by a fine of not less than 100 penalty units or imprisonment for a period of not less than 1 year; or
  - (ii) in the case of a body corporate—by a fine of not less than 500 penalty units;
- (e) whether the applicant has infringed copyright within the meaning of the *Copyright Act 1968* (Cwlth), part 4 in relation to a cinematograph film within the meaning of that Act.
- (5) In subsection (4) (c) and (d), a reference to an **applicant** includes, where the applicant is a body corporate, a reference to any influential person in relation to the body.
- (6) If the registrar refuses to grant a licence, the registrar shall refund to the applicant an amount equal to any fee accompanying the application for the licence.

#### **54F Form of licence**

A licence shall specify—

- (a) the full name and address of the licensee; and
- (b) whether the licence is granted in respect of the sale or copying, or the sale and copying, of X films; and
- (c) the premises in relation to which the licence is granted; and
- (d) the conditions (if any) to which the licence is subject.

### 54G Term of licence

Subject to this part, a licence remains in force for such period, not exceeding 1 year, as is specified in the licence.

### 54H Renewal of licence

- (1) A licensee may, at any time before the expiration of the period referred to in section 54G or the last period of renewal, as the case may be, apply to the registrar for a renewal of the licence.

*Note 1* A fee may be determined under s 67 (Determination of fees) for this section.

*Note 2* If a form is approved by the registrar under s 68 (Approved forms—registrar) for an application, the form must be used.

- (2) The registrar shall, on receipt of an application in accordance with subsection (1), renew the licence.
- (3) Subject to this part, a licence renewed under subsection (2) remains in force for a period of 1 year commencing on the expiration of the period referred to in section 54G, or the last period of renewal, as the case requires.

### 54J Payment by instalments

- (1) Where, under section 54H, the registrar renews a licence, the licensee may pay the determined fee by instalments.
- (2) Instalment payments shall be paid on or before the due date.
- (3) Where a person fails to pay an instalment by the due date, the registrar shall, by notice to the licensee, suspend the licence.
- (4) Where a person fails to pay an instalment within 30 days after the due date for the instalment, the registrar shall cancel the licence.
- (5) In this section:

*due date* means 1 February, 1 May, 1 August or 1 November.



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#### **54K Variation of conditions**

- (1) The registrar may, by notice in writing served on the licensee, vary the conditions specified in a licence.
- (2) A notice under subsection (1) takes effect from the day specified in the notice (being a day not less than 28 days after the date of the notice).
- (3) A licensee shall not, without reasonable excuse, fail to submit the licence to the registrar within 28 days after service of a notice referred to in subsection (1).

Maximum penalty: 20 penalty units.

- (4) On receipt of a licence, the registrar shall amend the licence and return it to the licensee within 7 days.

#### **54L Change of licensed premises**

- (1) Subject to subsection (2), a licensee shall before—
  - (a) selling X films at premises other than those specified in the licence; or
  - (b) ceasing to sell X films at particular premises specified in the licence;

submit the licence to the registrar together with written notice of the proposed change and the proposed date of the change.

- (2) A licensee shall not give notice under subsection (1) less than 28 days before the proposed date of change.
- (3) The registrar shall, within 7 days after receipt of a notice under subsection (1), amend the licence and return it to the licensee.
- (4) The amendment of a licence under subsection (3) takes effect on the date specified in the notice under subsection (1).

- (5) A licensee shall not, without reasonable excuse, contravene subsection (1).

Maximum penalty: 20 penalty units.

#### **54M Change of activity under a licence**

- (1) Where—
- (a) a licensee is authorised under a licence to sell and copy X films; and
  - (b) the licensee ceases to sell or copy X films;
- the licensee shall, not later than 28 days after he or she ceases to sell or copy X films—
- (c) notify the registrar in writing of that fact; and
  - (d) submit his or her licence to the registrar.
- (2) The registrar shall, within 7 days after receipt of a notice under subsection (1), amend the licence and return it to the licensee.
- (3) A licensee shall not, without reasonable excuse, contravene subsection (1).

Maximum penalty: 20 penalty units.

#### **U 54N Cancellation**

- (1) The registrar may cancel a licence if the registrar has reasonable grounds for believing that—
- (a) the licence was granted in error or in consequence of a false statement made, or misleading information furnished, by the applicant for the licence; or
  - (b) the licensee has contravened a condition of a licence; or
  - (c) the licensee has contravened this Act, the *Publications Control Act 1989* or the *Business Franchise (“X” Videos) Act 1990*; or

- (d) the licensee has been convicted of an offence—
    - (i) against this Act; or
    - (ii) that is punishable on conviction—
      - (A) in the case of a natural person—by a fine of not less than 100 penalty units or by imprisonment for a period of not less than 1 year; or
      - (B) in the case of a body corporate—by a fine of not less than 500 penalty units; or
  - (e) if the licensee is a natural person—he or she is an undischarged bankrupt; or
  - (f) if the licensee is a body corporate—it is being wound up; or
  - (g) the licensee has infringed copyright within the meaning of the *Copyright Act 1968* (Cwlth), part 4 in relation to a cinematograph film within the meaning of that Act.
- (2) In subsection (1) (c), (d) and (g), a reference to a *licensee* includes, where the licensee is a body corporate, a reference to any defined influential person in relation to the body.
- (3) The registrar shall, before cancelling a licence, by notice in writing served on the licensee, invite the licensee to show cause why the licence should not be cancelled.
- (4) A notice shall contain—
- (a) particulars of the facts and circumstances relied on by the registrar to establish that a ground for cancellation exists; and
  - (b) a statement to the effect that the licensee may, within such period as is specified in the notice (being a period of not less than 14 days after the date the notice is given), give to the registrar written particulars of the facts and circumstances relied on by the licensee to show that the licence should not be cancelled.

- (5) After the expiration of the period specified in a notice under subsection (3), the registrar may cancel the licence for the reasons referred to in the notice.
- (6) In making a decision under subsection (5), the registrar shall have regard to any explanation provided in accordance with subsection (3) as to why the licence should not be cancelled.
- (7) Cancellation of a licence takes effect on the expiration of the day on which notice of the cancellation is given to the licensee under section 54R.
- (8) The registrar shall cancel a licensee's licence on the written request of the licensee.

#### **54P Surrender**

- (1) A licensee shall not, without reasonable excuse, within 7 days after ceasing to sell or copy X films, fail to surrender his or her licence.  
Maximum penalty: 20 penalty units.
- (2) A licence is surrendered by giving written notice of its surrender, and the licence, to the registrar.
- (3) The surrender of a licence takes effect on the date the notice of surrender is given in accordance with subsection (2).

#### **54Q Expiration**

On the expiration of a licence by cancellation or lapse of time, the former licensee shall not, without reasonable excuse, fail to return the licence to the registrar within 7 days of its expiration.

Maximum penalty: 20 penalty units.

## Division 6.3      Review of decisions

### 54R    Notice of decisions

- (1) This section applies to the following decisions of the registrar:
  - (a) under section 54E (1) (b) to refuse to grant a licence;
  - (b) under section 54E (2) to grant a licence subject to conditions;
  - (c) under section 54K (1) to vary a condition to which the licence is subject;
  - (d) under section 54N (1) to cancel a licence;
  - (e) under section 54Y (3) to refuse to approve the extension of the defined period in relation to a seized film;
  - (f) under section 54Y (3) to approve the extension of the defined period in relation to a seized film for a period less than that applied for by the person from whom the film was seized;
  - (g) under section 54ZB (1) to destroy a seized film.
- (2) Where the registrar makes a decision to which this section applies, he or she shall cause notice in writing of the decision to be given to—
  - (a) in the case of a decision referred to in subsection (1) (a) to (f)—the applicant or licensee, as the case requires; or
  - (b) in the case of a decision referred to in subsection (1) (g)—the person from whom the film was seized.
- (3) A notice under subsection (2) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

### 54S    Review by administrative appeals tribunal

Application may be made to the administrative appeals tribunal for a review of a decision referred to in section 54R (1).

## Division 6.4 Enforcement

### **U** 54T Interpretation

In this division:

*X film* includes an unclassified film and a film classified RC.

### **54U Inspectors**

- (1) There shall be 1 or more inspectors for this part.
- (2) The chief executive shall create and maintain 1 or more offices in the public service the duties of which include performing the functions of an inspector.
- (3) An inspector shall be a public servant for the time being performing the duties of a public service office referred to in subsection (2).

### **U** 54V Identity cards

- (1) The chief executive shall issue to an inspector an identity card specifying the inspector's name and office, and on which appears a recent photograph of the inspector.
- (2) On ceasing to occupy, or to act in, the office of the inspector a person shall not, without reasonable excuse, fail to return his or her identity card to the chief executive.

Maximum penalty: 1 penalty unit.

### **U** 54W Powers of entry, search etc

- (1) For this part an inspector may, without a warrant—
  - (a) enter premises to which a licence relates at any reasonable time when those premises are open for business; or
  - (b) subject to section 54X, enter any premises at any time with the consent of the occupier of those premises.

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- (2) An inspector who enters premises under subsection (1), is not authorised to remain on the premises if, on request by or on behalf of the licensee or occupier of the premises, the inspector does not produce his or her identity card.
- (3) An inspector who enters premises pursuant to subsection (1) may—
- (a) inspect, make copies of, or take extracts from, any film, or any document or record that the inspector has reasonable grounds for believing to be connected with the sale of X films; and
  - (b) seize any thing that the inspector has reasonable grounds for believing to be connected with an offence against this Act; and
  - (c) require any person on the premises to make available any films, or any document or record kept on the premises, to furnish information that the inspector has reasonable grounds for believing is connected with the sale of X films, and to answer questions; and
  - (d) require the licensee or occupier to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under this section.
- (4) A person shall not, without reasonable excuse, fail to comply with a requirement made of the person under subsection (3) (c) or (d).

Maximum penalty: 50 penalty units.

#### **54X Consent to entry and inspection**

- (1) Before seeking the consent of the licensee or occupier of premises for section 54W (1) (b), an inspector shall inform the occupier that he or she may refuse to give that consent.
- (2) If an inspector obtains the consent of the licensee or occupier of premises for section 54W (1) (b), the inspector shall ask the licensee or occupier to sign a written acknowledgment—

- (a) that the licensee or occupier has given the inspector consent, for that paragraph, to enter the premises and to exercise the powers of an inspector under section 54W (3); and
  - (b) that the licensee or occupier has been informed that he or she may refuse to give that consent; and
  - (c) specifying the day on which, and the time at which, that consent was given.
- (3) Where it is material, in any proceedings, for a court to be satisfied of the consent of an occupier for section 54W (1) (b) and an acknowledgment in accordance with subsection (2) is not produced in evidence, it shall be presumed that the occupier did not consent unless the contrary is established.

## Division 6.5 Seized films

### **U** 54Y Interpretation

- (1) In this division:

*defined offence*, in relation to a seized film, means an offence in relation to that film against—

- (a) this Act; or
- (b) the *Crimes Act 1900*, section 65; or
- (c) the *Publications Control Act 1989*; or
- (d) the *Business Franchise (“X” Videos) Act 1990*.

*defined period*, in relation to a seized film, means—

- (a) 120 days after the seizure of the film; or
- (b) such extended, or further extended, period as is approved under subsection (3).

*seized film* means a film seized under section 54W.



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- (2) For this division, proceedings in relation to a defined offence shall not be taken to be determined until—
- (a) the expiration of any period for lodging an appeal in relation to the proceedings; or
  - (b) if any appeal has been lodged in relation to the proceedings—the appeal has been determined, and any period for lodging a further appeal has expired.
- (3) For this division, the registrar may by instrument approve the extension, or further extension, of the defined period in relation to a seized film for such period as he or she considers on reasonable grounds to be necessary or desirable for—
- (a) allowing the person from whom the film was seized to satisfy the registrar on reasonable grounds that the film is classified X, R, MA, M, PG or G; or
  - (b) the administration of this Act.
- (4) The registrar may by instrument approve the extension of a defined period under subsection (3)—
- (a) on the written application of the person from whom the relevant film was seized, being an application made before that period would otherwise have expired; or
  - (b) at any time, on the registrar’s own motion.
- (5) The registrar shall give a copy of an instrument of extension under subsection (4) (b) in relation to a seized film to the person from whom the film was seized.

**U 54YA When proceedings for defined offence determined**

**U 54YB Extension of defined period**

**54Z Notice**

- (1) This section applies to a seized film if the registrar is not satisfied on reasonable grounds that the film is classified X, R, MA, M, PG or G.
- (2) Where this section applies to a seized film, the registrar shall give a written notice to the person from whom the film was seized inviting the person to satisfy the registrar on reasonable grounds within the defined period that the film is classified X, R, MA, M, PG or G.
- (3) A notice under subsection (2) shall include a statement to the effect that—
  - (a) the seized film may be destroyed unless the person satisfies the registrar on reasonable grounds that the film is classified X, R, MA, M, PG or G; and
  - (b) the person from whom the film was seized may apply to the registrar under section 54Y (4) for the extension, or further extension, of the defined period.

**54ZA Return of seized films**

The registrar shall take reasonable steps to return a seized film to the person from whom it was seized where—

- (a) the registrar is satisfied on reasonable grounds that the film is classified X, R, MA, M, PG or G; and
- (b) either—
  - (i) proceedings in relation to a defined offence have not been instituted at the expiration of the defined period after the date of seizure; or
  - (ii) if such proceedings have been instituted within that period—the proceedings have been determined (whether

before or after the expiration of that period) and no offence has been found proved in relation to the film; and

- (c) if the person is a licensee—
  - (i) an invitation under section 54N (3) on the ground referred to in section 54N (1) (c) in relation to the film has not been issued to the person at the expiration of the defined period after the date of seizure; or
  - (ii) if such an invitation has been issued within that period—the registrar has made a decision (whether before or after the expiration of that period) not to cancel the licence on that ground.

#### **54ZB Destruction of seized films**

- (1) The registrar shall destroy a seized film where, following the issue of a notice under section 54Z (2)—
  - (a) the person from whom the film was seized does not satisfy the registrar on reasonable grounds, pursuant to the invitation in the notice, that the film is classified X, R, MA, M, PG or G; and
  - (b) either—
    - (i) proceedings in relation to a defined offence have not been instituted at the expiration of the defined period after the date of seizure; or
    - (ii) if such proceedings have been instituted within that period—the proceedings have been determined (whether before or after the expiration of that period) and no offence has been found proved in relation to the film.
- (2) The registrar shall destroy a seized film where—
  - (a) the person from whom the film was seized is a licensee; and

- (b) the licence is cancelled on the ground referred to in section 54N (1) (c) in relation to the film.
- (3) The registrar shall destroy a seized film where a defined offence in relation to the film is proved.
- (4) Despite subsections (1), (2) and (3), the registrar may retain a seized film for the purposes of the administration of this Act for such period as he or she considers on reasonable grounds to be necessary or desirable for those purposes.

## Part 7 Exemptions

### 55 Exemption—publications, films, computer games or advertisements

- (1) The Minister or director may, on application, by notice, exempt a film, publication, computer game or advertisement specified in the notice from such of the provisions of this Act as are specified in the notice.
- (2) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the notice.

### 56 Exemption—approved organisation

- (1) The Minister or director may, on application, by notice, exempt an organisation approved under section 57 in relation to the exhibition of a film at an event that is specified in the notice from such of the provisions of this Act as are so specified.
- (2) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the notice.
- (3) An application shall—
  - (a) be in writing; and
  - (b) specify the film which the organisation intends to exhibit and the event at which the film is to be exhibited; and
  - (c) be accompanied by a synopsis of the story or events depicted in the film.

*Note* A fee may be determined under s 67 (Determination of fees) for this subsection.

## 57 Organisations may be approved

- (1) The Minister may, on application, in writing, approve an organisation for this part.
- (2) The director may, on application, in writing, approve an organisation for this part.
- (3) In considering whether to approve an organisation, the Minister or director shall have regard to—
  - (a) the purpose for which the organisation was formed; and
  - (b) the extent to which the organisation carries on activities of a medical, scientific, educational, cultural or artistic nature; and
  - (c) the reputation of the organisation in relation to the screening of films; and
  - (d) the conditions as to admission of persons to the screening of films by the organisation.
- (4) An approval under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (5) An approval under subsection (1) takes effect on notification of the approval under the *Legislation Act 2001* and an approval under subsection (2) takes effect on publication in the Commonwealth Gazette of the notice by which the approval is made.
- (6) Where the Minister or director has reasonable grounds for believing that it is no longer appropriate that an organisation be approved by reason of a change in any matter referred to in subsection (3), the Minister or director shall, by notice in writing to the organisation—
  - (a) set out the grounds for his or her belief; and
  - (b) invite the organisation, within a period specified in the notice, to show cause why the approval should not be revoked.

- (7) The Minister or director may—
- (a) on the expiration of the period referred to in section (6) (b); and
  - (b) after taking into consideration any representations made by the organisation;
- by notice in writing, revoke the approval.
- (8) Revocation of an approval takes effect on the date of the decision to revoke or on a later date specified in a notice under subsection (7).

### **57A Ministerial directions and guidelines**

In exercising any power under this part, the director shall give effect to any directions or guidelines issued by the Minister in relation to the application of this part.

### **58 Notice of decisions**

- (1) Where the Minister or director makes a decision—
- (a) refusing to exempt—
    - (i) a film, publication, computer game or advertisement under section 55; or
    - (ii) an organisation under section 56; or
  - (b) specifying provisions of this Act from which a film, publication, computer game or advertisement is exempt under section 55; or
  - (c) specifying provisions of this Act from which an organisation is exempt under section 56; or
  - (d) specifying conditions subject to which an exemption is given under section 55 or 56; or
  - (e) refusing to approve an organisation under section 57 (1) or (2); or
  - (f) revoking an approval under section 57 (7);

the Minister or director shall give notice in writing of the decision to the applicant.

- (2) A notice under subsection (1) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

### **59 Review of decisions**

Application may be made to the administrative appeals tribunal for a review of a decision referred to in section 58.



## Part 8 Miscellaneous

### **U 60 Corporations—penalties**

Where a body corporate is convicted of an offence against this Act or the regulations, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

### **61 Restricted publications area—construction and management**

- (1) A restricted publications area shall be so constructed that no part of the interior of the area is visible to any person outside the area.
- (2) Each entrance to a restricted publications area shall—
  - (a) be fitted with a gate or door capable of excluding persons from the area; and
  - (b) be closed by means of that gate or door when the area is not open to the public.
- (3) A restricted publications area shall be managed by an adult who shall be in attendance in or near the area at all times when the area is open to the public.
- (4) The manager of a restricted publications area shall cause notice in the form prescribed by the regulations to be displayed in a prominent place on or near each entrance to the area, so that it is clearly visible from outside the area.

### **62 Restricted publications area—offences**

- (1) The manager of a restricted publications area shall not, without reasonable excuse, permit a minor to enter that area.

Maximum penalty: 10 penalty units.

Section 63

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- (2) The manager of a restricted publications area shall not, without reasonable excuse, exhibit, or cause or permit to be exhibited, in the area a film classified R or X, except by means of a slot machine operated by a coin or token.

Maximum penalty: 50 penalty units.

**63 Evidence**

In any proceeding for an offence against this Act, a certificate signed or purporting to be signed by the director or deputy director and stating that—

- (a) a film, publication or computer game is classified as specified in the certificate; or
- (b) a film, publication or computer game is not classified, or is not classified at a classification specified in the certificate; or
- (c) an advertisement described in the certificate is approved, has been refused approval or has not been approved;

is evidence of the matters stated in the certificate.

**64 Commencement of prosecution for an offence**

- (1) A prosecution for an offence against this Act in relation to a film, publication or computer game that is unclassified at the time of the alleged offence—
- (a) shall not be commenced until the film, publication or computer game has been classified; and
  - (b) may be commenced not later than 12 months after the date on which the film, publication or computer game was classified.
- (2) Subsection (1) (a) does not apply to a prosecution—
- (a) against section 6 (1), 15 or 19 (1) in relation to an unclassified film; or

- (b) against section 33 (1) or 40 (1) in relation to an unclassified computer game.

#### **64A Forfeiture of certain publications, films and computer games**

- (1) Where a person is convicted of an offence in relation to a publication, film or computer game that is classified RC, the court may order that the publication, film or computer game is forfeited to the Territory.
- (2) This section does not apply to a film seized under section 54W.

#### **65 Publication to prescribed person or body**

Despite anything to the contrary in this Act, a person may publish to a prescribed person or body, or to a person or body in a prescribed class of persons or bodies—

- (a) a film or computer game classified RC, X, R or MA; or
- (b) a publication classified Category 1 restricted, Category 2 restricted or RC; or
- (c) a submittable publication.

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

- (1) Where, for the purposes of a prosecution for an offence against this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—
  - (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
  - (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

Section 66

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- (2) A reference in subsection (1) to the state of mind of a body or person includes a reference to—
- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
  - (b) the body's or person's reasons for the intention, opinion, belief or purpose.
- (3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.
- (4) Where—
- (a) a natural person is convicted of an offence against this Act; and
  - (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (5) A reference in this section to a *director* of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.
- (6) A reference in this section to *engaging* in conduct is to be read as including a reference to failing or refusing to engage in conduct.

**67 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**68 Approved forms—registrar**

- (1) The registrar may, in writing, approve forms for this Act (other than a form stated by this Act to be an approved form).

*Note* Approved forms are forms approved by the director of the board (see s 3, def of *approved form*).

- (2) If the registrar approves a form for a particular purpose, the form approved by the registrar must be used for that purpose.

- (3) A form approved by the registrar is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

**69 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**U 70 Application of certain amendments made by Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2001**

## **U** Dictionary

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

## Endnotes

3 Legislation history

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### 3 Legislation history

**Classification (Publications, Films and Computer Games)  
(Enforcement) Act 1995 No 47**

notified 18 December 1995 (Gaz 1995 No S306)  
s 1, s 2 commenced 18 December 1995 (s 2 (1))  
remainder commenced 1 January 1996 (s 2 (2) (a) and see Cwlth Gaz  
1995 No GN50)

as amended by

**Classification (Publications, Films and Computer Games)  
(Enforcement) (Amendment) Act 1996 No 46**

notified 19 September 1996 (Gaz 1996 No S234)  
commenced 19 September 1996 (s 2)

**Classification (Publications, Films and Computer Games)  
(Enforcement) (Amendment) Act (No 2) 1996 No 77**

notified 20 December 1996 (Gaz 1996 No S328)  
ss 1-3 commenced 20 December 1996 (s 2 (1))  
ss 4-18 commenced 1 January 1997 (s 2 (2) and Gaz 1996 No S349)  
remainder commenced 8 January 1997 (s 2 (2) and Gaz 1997 No S2)

**Classification (Publications, Films and Computer Games)  
(Enforcement) (Amendment) Act 1997 No 108**

notified 24 December 1997 (Gaz 1997 No S420)  
commenced 24 December 1997 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 62**

notified 26 July 2001 (Gaz 2001 No 30) (Gaz 1995 No S306)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 62 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)



**Classification (Publications, Films and Computer Games)  
(Enforcement) Amendment Act 2001 No 72**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
remainder awaiting commencement (s 2 (1))

*Note* If a provision has not commenced before 23 March 2002, it automatically commences on that day (s 2 (2)).

#### 4 Amendment history

**Name of Act**

s 1 sub 2001 No 72 amdt 1.1

**Dictionary**

s 2 om 2001 No 44 amdt 1.720  
ins 2001 No 72 amdt 1.1

**Definitions for Act**

s 3 defs reloc to dict 2001 No 72 amdt 1.3  
def **approved advertisement** om 2001 No 72 amdt 1.2  
def **business day** om 2001 No 72 amdt 1.2  
def **classification certificate** om 2001 No 72 amdt 1.2  
def **computer game** om 2001 No 72 amdt 1.2  
def **court** om 2001 No 72 amdt 1.2  
def **determined fee** om 2001 No 44 amdt 1.721  
def **film** om 2001 No 72 amdt 1.2  
def **publication** om 2001 No 72 amdt 1.2  
def **publish** om 2001 No 72 amdt 1.2  
def **submittable publication** om 2001 No 72 amdt 1.2  
om 2001 No 72 amdt 1.4

**Exhibition of films**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R2 LA (see 2001 No 72 amdt 1.28)

**Application of Act**

s 5 sub 2001 No 72 s 6

**Exhibition of films—display of notice about classifications**

s 7 hdg sub 2001 No 72 amdt 1.5  
s 7 am 2001 No 44 amdt 1.722

**Sale of films**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R2 LA (see 2001 No 72 amdt 1.28)

**Sale of films—display of notice about classifications**

s 17 hdg sub 2001 No 72 amdt 1.6  
s 17 am 2001 No 44 amdt 1.723

## Endnotes

4 Amendment history

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### **Films to bear determined markings and consumer advice**

s 18 [am 2001 No 72 s 7](#)

### **X films**

s 20 am 1996 No 77

### **Miscellaneous**

div 2.3 hdg (prev pt 2 div 3 hdg) renum R2 LA (see [2001 No 72 amdt 1.28](#))

### **Power to demand name, age and address**

s 22 [am 2001 No 72 amdt 1.7](#)

### **Possession or copying of film**

s 24 am 1996 No 77; 1997 No 108

### **Category 1 restricted publications**

s 26 [am 2001 No 72 s 8](#)

### **Category 2 restricted publications**

s 27 [am 2001 No 72 s 9](#)

### **Sale or delivery of publications contrary to conditions**

s 27A [ins 2001 No 72 s 10](#)

### **Consumer advice for unrestricted publications**

s 27B [ins 2001 No 72 s 10](#)

### **Misleading or deceptive markings**

s 29 [am 2001 No 72 s 11](#)

### **Computer games—display of notice about classifications**

s 34 hdg [sub 2001 No 72 amdt 1.8](#)

s 34 am 2001 No 44 amdt 1.724

### **Computer games to bear determined markings and consumer advice**

s 39 [am 2001 No 72 s 12, s 13; LA \(see 2001 No 72 s 14\)](#)

### **Keeping unclassified or RC computer games with other computer games**

s 40 [am 2001 No 72 amdt 1.9](#)

### **Certain advertisements not to be published**

s 44 [am 2001 No 72 s 15, s 16](#)

### **Certain publications, films and computer games not to be advertised**

s 45 am 1996 No 46

### **Advertisement to contain determined markings and consumer advice**

s 50 [am 2001 No 72 s 17](#)

### **Misleading or deceptive advertisements**

s 51 [am 2001 No 72 s 18](#)

### **Advertisements and X films**

s 53 [am 2001 No 72 amdt 1.10](#)

**X films**

pt 6 hdg ins 1996 No 77

**Preliminary**

div 6.1 hdg (prev pt 6 div 1 hdg) renum R2 LA (see 2001 No 72 amdt 1.28)

**Definitions for pt 6**

s 54A hdg sub 2001 No 72 amdt 1.11

s 54A ins 1996 No 77

am 2001 No 72 amdts 1.12-1.14

**X film licences**

div 6.2 hdg (prev pt 6 div 2 hdg) renum R2 LA (see 2001 No 72 amdt 1.28)

**Registrar of X Film Licences**

s 54B ins 1996 No 77

**Application for X film licence**

s 54C ins 1996 No 77

sub 2001 No 44 amdt 1.725

**Further information on licence application**

s 54D ins 1996 No 77

**Grant or refusal of licence**

s 54E ins 1996 No 77

am 2001 No 44 amdt 1.726; 2001 No 72 amdt 1.15

**Form of licence**

s 54F ins 1996 No 77

**Term of licence**

s 54G ins 1996 No 77

**Renewal of licence**

s 54H ins 1996 No 77

am 2001 No 44 amdts 1.727-1.729

**Payment by instalments**

s 54J ins 1996 No 77

**Variation of conditions**

s 54K ins 1996 No 77

**Change of licensed premises**

s 54L ins 1996 No 77

**Change of activity under a licence**

s 54M ins 1996 No 77

**Cancellation**

s 54N ins 1996 No 77

am 2001 No 72 amdt 1.16

## Endnotes

4 Amendment history

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### **Surrender**

s 54P ins 1996 No 77

### **Expiration**

s 54Q ins 1996 No 77

### **Review of decisions**

div 6.3 hdg (prev pt 6 div 3 hdg) renum R2 LA (see [2001 No 72 amdt 1.28](#))

### **Notice of decisions**

s 54R ins 1996 No 77  
am 1997 No 108  
ss renum R2 LA

### **Review by Administrative Appeals Tribunal**

s 54S ins 1996 No 77

### **Enforcement**

div 6.4 hdg (prev pt 6 div 4 hdg) renum R2 LA (see [2001 No 72 amdt 1.28](#))

### **Meaning of X film for div 6.4**

s 54T hdg [sub 2001 No 72 amdt 1.17](#)  
s 54T ins 1996 No 77

### **Inspectors**

s 54U ins 1996 No 77

### **Identity cards**

s 54V ins 1996 No 77  
[am 2001 No 72 amdt 1.18](#)

### **Powers of entry, search etc**

s 54W ins 1996 No 77  
[am 2001 No 72 amdt 1.19](#)

### **Consent to entry and inspection**

s 54X ins 1996 No 77

### **Seized films**

div 6.5 hdg (prev pt 6 div 5 hdg) ins 1997 No 107  
renum R2 LA (see [2001 No 72 amdt 1.28](#))

### **Definitions for div 6.5**

s 54Y hdg [sub 2001 No 72 amdt 1.20](#)  
s 54Y ins 1996 No 77  
sub 1997 No 108  
[am 2001 No 72 amdt 1.21](#)  
[\(2\) renum R2 as s 54YA \(see 2001 No 72 amdt 1.22\)](#)  
[\(3\)-\(5\) renum R2 as s 54YB \(see 2001 No 72 amdt 1.24\)](#)

### **When proceedings for defined offence determined**

s 54YA hdg [ins 2001 No 72 amdt 1.23](#)  
s 54YA [\(prev s 54Y \(2\)\) renum 2001 No 72 amdt 1.22](#)

**Extension of defined period**

s 54YB hdg ins 2001 No 72 amdt 1.25  
s 54YB (prev s 54Y (3)-(5)) renum 2001 No 72 amdt 1.24

**Notice**

s 54Z ins 1997 No 108

**Return of seized films**

s 54ZA ins 1997 No 108

**Destruction of seized films**

s 54ZB ins 1997 No 108

**Exemption—publications, films, computer games or advertisements**

s 55 am 1996 No 46

**Exemption—approved organisation**

s 56 am 1996 No 46; 2001 No 44 amdt 1.730

**Organisations may be approved**

s 57 am 1996 No 46; 2001 No 44 amdt 1.731-1.733; ss renum R2  
LA (see 2001 No 44 amdt 1.734)

**Ministerial directions and guidelines**

s 57A ins 1996 No 46

**Notice of decisions**

s 58 am 1996 No 46

**Corporations—penalties**

s 60 om 2001 No 72 amdt 1.26

**Restricted publications area—construction and management**

s 61 am 2001 No 44 amdt 1.735

**Commencement of prosecution for an offence**

s 64 am 1996 No 77

**Forfeiture of certain publications, films and computer games**

s 64A ins 1996 No 77  
am 1997 No 108

**Determination of fees**

s 67 sub 2001 No 44 amdt 1.736

**Approved forms—registrar**

s 68 sub 2001 No 44 amdt 1.736

**Regulation-making power**

s 69 sub 2001 No 44 amdt 1.736

## Endnotes

4 Amendment history

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### Application of certain amendments made by Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2001

s 70 [ins 2001 No 72 s 19](#)  
[exp 31 December 2002 \(s 70 \(3\)\)](#)

### Dictionary

dict [ins 2001 No 72 amdt 1.27](#)  
[defs reloc from s 3 2001 No 72 amdt 1.3](#)  
def **acceptable proof of age** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **adult** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **advertisement** [reloc from s 3 2001 No 72 amdt 1.3](#)  
and [ins 2001 No 72 amdt 1.27](#)  
def **approved form** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **board** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **buy** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **classified** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **Commonwealth Act** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **computer game** [ins 2001 No 72 amdt 1.27](#)  
def **consumer advice** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **defined offence** [ins 2001 No 72 amdt 1.27](#)  
def **defined period** [ins 2001 No 72 amdt 1.27](#)  
def **demonstrate** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **deputy director** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **determined markings** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **director** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **exempt computer game** [ins 2001 No 72 s 4](#)  
[reloc from s 3 2001 No 72 amdt 1.3](#)  
def **exempt film** [ins 2001 No 72 s 4](#)  
[reloc from s 3 2001 No 72 amdt 1.3](#)  
def **exhibit** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **exhibit** [ins 2001 No 72 amdt 1.27](#)  
def **film** [reloc from s 3 2001 No 72 amdt 1.3](#) and [ins 2001 No 72 amdt 1.27](#)  
def **guardian** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **influential person** [ins 2001 No 72 amdt 1.27](#)  
def **international flight** [ins 2001 No 72 s 4](#)  
[reloc from s 3 2001 No 72 amdt 1.3](#)  
def **international voyage** [ins 2001 No 72 s 4](#)  
[reloc from s 3 2001 No 72 amdt 1.3](#)  
def **licence** [ins 2001 No 72 amdt 1.27](#)  
def **place** [sub 2001 No 72 s 5](#)  
[reloc from s 3 2001 No 72 amdt 1.3](#)  
def **publication** [reloc from s 3 2001 No 72 amdt 1.3](#) and  
[ins 2001 No 72 amdt 1.27](#)  
def **public place** [reloc from s 3 2001 No 72 amdt 1.3](#)  
def **publish** [ins 2001 No 72 amdt 1.27](#)

def **registrar** ins 2001 No 72 amdt 1.27  
 def **restricted publications area** am 1996 No 46 s 4  
 reloc from s 3 2001 No 72 amdt 1.3  
 def **seized film** ins 2001 No 72 amdt 1.27  
 def **sell** reloc from s 3 2001 No 72 amdt 1.3  
 def **submittable publication** ins 2001 No 72 amdt 1.27  
 def **X-film** am 1996 No 77 s 4  
 reloc from s 3 2001 No 72 amdt 1.3  
 def **X film** ins 2001 No 72 amdt 1.27

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	1997 No 108	31 December 1997

## 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

### Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2001 No 72

#### 4 Interpretation

#### Section 3, new definitions of *exempt computer game*, *exempt film*, *international flight* and *international voyage*

*insert*

*exempt computer game*—see the Commonwealth Act, section 5 (Definitions).

*exempt film*—see the Commonwealth Act, section 5 (Definitions).

*international flight*, in relation to an aircraft, means a flight that passes through the airspace over the territory of more than 1 country, and includes any part of the flight that may happen in Australia.

## Endnotes

6 Uncommenced amendments

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*international voyage*, in relation to a vessel, means a voyage, whether direct or indirect, between a place in Australia and a place outside Australia, and includes any part of the voyage that may happen in Australia.

### 5 Section 3, definition of *place*

*substitute*

*place* includes vacant land, premises, a vehicle, a vessel and an aircraft (except a vessel on an international voyage or an aircraft on an international flight).

### 6 Section 5

*substitute*

### 5 Application of Act

This Act does not apply to—

- (a) broadcasting services to which the *Broadcasting Services Act 1992* (Cwlth) applies; or
- (b) exempt films or exempt computer games.

### 7 Films to bear determined markings and consumer advice Section 18 (4)

*substitute*

- (4) If—
  - (a) a film 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 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);



---

it is sufficient compliance with this section for 30 days after the decision to reclassify or revoke takes effect if the film displays the determined markings and consumer advice applying to the film before the reclassification or revocation.

## **8 Category 1 restricted publications**

### **Section 26 (2)**

*substitute*

- (2) However, subject to any condition imposed by the board under the Commonwealth Act, section 13A (2) (Conditions of certain classifications for publications), if the sale or delivery takes place in a restricted publications area, the package need not be sealed but on delivery must be contained in an opaque wrapper.
- (3) 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);

it is sufficient compliance with subsection (1) for 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applying to the publication before the reclassification or revocation.

## **9 Category 2 restricted publications**

### **Section 27 (3)**

## Endnotes

6 Uncommenced amendments

---

*substitute*

- (3) 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);

it is sufficient compliance with subsection (2) (b) for 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applying to the publication before the reclassification or revocation.

## 10 New sections 27A and 27B

*insert*

### 27A Sale or delivery of publications contrary to conditions

If a publication is classified Unrestricted or Category 1 restricted subject to a condition imposed under the Commonwealth Act, section 13A (Conditions of certain classifications for publications), a person must not, without reasonable excuse, sell or deliver the publication except in accordance with the condition.

Maximum penalty: 30 penalty units.

### 27B Consumer advice for unrestricted publications

A person must not, without reasonable excuse, sell a publication classified Unrestricted in relation to which the board has determined consumer advice under the Commonwealth Act, section 20 (2) (board to decide consumer advice for publications, films and computer games), unless the consumer advice is displayed on the publication or the packaging of the publication.

Maximum penalty: 10 penalty units.

**11 Misleading or deceptive markings**  
**Section 29 (3)**

*substitute*

- (3) 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);

it is sufficient compliance with this section for 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applying to the publication before the reclassification or revocation.

**12 Computer games to bear determined markings and consumer advice**  
**New section 39 (3A) and (3B)**

*insert*

- (3A) A person must not, without reasonable excuse, make a computer game available for playing on a pay and play basis (for example, a coin operated arcade game) unless the determined markings relevant to the classification of the computer game and relevant consumer advice (if any) are displayed on the device used for playing the game.

Maximum penalty: 10 penalty units.

- (3B) If 2 or more computer games are available for playing on a device mentioned in subsection (3A), the determined markings and

## Endnotes

6 Uncommenced amendments

---

consumer advice to be displayed on the device are those relevant to the computer game with the highest classification under the Commonwealth Act.

### 13 Section 39 (4)

*substitute*

- (4) If—
- (a) a computer game is reclassified under the Commonwealth Act, section 39 (Reclassification etc after 2 years); or
  - (b) the board revokes a classification or consumer advice for a 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);

it is sufficient compliance with this section for 30 days after the decision to reclassify or revoke takes effect if the computer game displays the determined markings and consumer advice applying to the computer game before the reclassification or revocation.

### 14 Section 39

*renumber subsections when Act next republished under Legislation Act 2001*

### 15 Certain advertisements not to be published Section 44 (1) (b)

*after*

Act

*insert*

; or

### 16 New section 44 (1) (c)

*insert*

- (c) if the advertisement was approved under the Commonwealth Act, section 29 (Approval of advertisements) and the approval is later revoked under the Commonwealth 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).

**17 Advertisement to contain determined markings and consumer advice**  
**Section 50 (2)**

*substitute*

- (2) 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);

it is sufficient compliance with subsection (1) for 30 days after the decision to reclassify or revoke takes effect if the determined markings and consumer advice applying to the film, publication or computer game before the reclassification or revocation are displayed.

**18 Misleading or deceptive advertisements**  
**Section 51 (3)**

*substitute*

- (3) If—

## Endnotes

6 Uncommenced amendments

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- (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 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);

it is sufficient compliance with subsection (2) for 30 days after the decision to reclassify or revoke takes effect if the determined markings applying to the film, publication or computer game before the reclassification or revocation are published.

### 19 New section 70

*insert*

### 70 Application of certain amendments made by Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2001

- (1) The amendment of this Act, made by the *Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2001* (the **amending Act**), that inserted section 39 (3A) and (3B) applies in relation to a computer game whether published before or after the commencement of the amending Act.
- (2) The amendments of this Act, made by the amending Act (other than the amendment that inserted section 39 (3A) and (3B) and the amendments made by schedule 1 of that Act), do not apply in relation to a publication, film or computer game—
  - (a) first published before the commencement of that Act; or
  - (b) for which an application for classification was made before the commencement of that Act.
- (3) This section expires on 31 December 2002.

## Schedule 1 Technical amendments— Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

(see s 3)

### [1.1] Section 1

*substitute*

#### 1 Name of Act

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

#### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*exempt film*—see the Commonwealth Act, section 5 (Definitions).' means that the expression '*exempt film*' is defined in that section and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

### [1.2] Section 3, definitions of *approved advertisement, business day, classification certificate, computer game, court, film, publication, publish and submittable publication*

*omit*

## Endnotes

6 Uncommenced amendments

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**[1.3] Section 3, definitions (as amended by this Act)**

*relocate to dictionary*

**[1.4] Section 3, remainder**

*omit*

**[1.5] Section 7, heading**

*substitute*

**7 Exhibition of films—display of notice about classifications**

**[1.6] Section 17, heading**

*substitute*

**17 Sale of films—display of notice about classifications**

**[1.7] Section 22 (2)**

*omit*

or refuse

**[1.8] Section 34, heading**

*substitute*

**34 Computer games—display of notice about classifications**

**[1.9] Section 40 (1)**

*substitute*

- (1) If a person keeps or possesses an unclassified computer game or a computer game classified RC on any premises where classified



computer games are sold or demonstrated, the person and the occupier of the premises each commit an offence.

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

#### **[1.10] Section 53 (1)**

*substitute*

- (1) If—
- (a) an advertisement for a film classified R is published in a publication; and
  - (b) a film classified X is sold to a person responding to the advertisement;

the person who, without reasonable excuse, sells the film commits an offence.

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

#### **[1.11] Section 54A, heading**

*substitute*

#### **54A Definitions for pt 6**

#### **[1.12] Section 54A (1)**

*insert*

*offence*, against this Act, includes an offence against the Crimes Act 1900, part 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) in relation to an offence against this Act.

## Endnotes

6 Uncommenced amendments

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### **[1.13] Section 54A (1)**

*omit*

(1) In

*substitute*

In

### **[1.14] Section 54A (2)**

*omit*

### **[1.15] Section 54E (4) (d)**

*substitute*

(d) whether the applicant has been convicted of an offence punishable by a fine of at least 100 penalty units or imprisonment for at least 1 year;

### **[1.16] Section 54N (1) (d) (ii)**

*substitute*

(ii) that is punishable by a fine of at least 100 penalty units or imprisonment for at least 1 year; or

### **[1.17] Section 54T, heading**

*substitute*

### **54T Meaning of *X film* for div 6.4**

### **[1.18] Section 54V, penalty**

*substitute*

Maximum penalty (subsection (2)): 1 penalty unit.

**[1.19] Section 54W (4), penalty**

*substitute*

Maximum penalty: 50 penalty units.

**[1.20] Section 54Y, heading**

*substitute*

**54Y Definitions for div 6.5****[1.21] Section 54Y (1)**

*omit*

(1) In

*substitute*

In

**[1.22] Section 54Y (2)**

*renumber as section 54YA*

**[1.23] New section 54YA, heading**

*insert*

**54YA When proceedings for defined offence determined****[1.24] Section 54Y (3) to (5)**

*renumber as section 54YB (1) to (3)*

**[1.25] New section 54YB, heading**

*insert*

**54YB Extension of defined period****[1.26] Section 60**

*omit*

**[1.27] New dictionary**

*insert*

## Dictionary

(see s 2)

*advertisement*—see the Commonwealth Act, section 5 (Definitions).

*computer game*—see the Commonwealth Act, section 5 (Definitions).

*defined offence*, for division 6.5 (Seized films)—see section 54Y.

*defined period*, for division 6.5 (Seized films)—see section 54Y.

*exhibit*—

- (a) in relation to a film—means projected or screen; and
- (b) a film in a public place—see section 4.

*film*—see the Commonwealth Act, section 5 (Definitions).

*influential person*, for part 6 (X films)—see section 54A.

*licence*, for part 6 (X films)—see section 54A.

*publication*—see the Commonwealth Act, section 5 (Definitions).

*publish*—see the Commonwealth Act, section 5 (Definitions).

*registrar*, for part 6 (X films)—see section 54A.

*seized film*, for division 6.5 (Seized films)—see section 54Y.

*submittable publication*—see the Commonwealth Act, section 5 (Definitions).

*X film* —

- (a) means a film classified X; and

(b) for division 6.4 (Enforcement)—see section 54T.

**[1.28] Renumbering of divisions**

*renumber divisions when Act next republished under Legislation Act 2001*

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