

2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2001

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Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2001

A Bill for

An Act to amend the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* because of amendments of the *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth), and for other purposes

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

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1 Name of Act

This Act is the *Classification (Publications, Films and Computer Games) (Enforcement) Amendment Act 2001*.

2 Commencement

(1) This Act commences on a day fixed by the Minister by notice in the Gazette.

Note 1 The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

(2) However, if a provision has not commenced before 23 March 2002, it automatically commences on that day.

(3) The *Legislation Act 2001*, section 79 (Automatic commencement of postponed law) does not apply to this section.

3 Act amended

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

Note The Act is amended in the body of this Act and in schedule 1.

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.

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 97A (Reclassification); or
- (b) the board revokes a classification or consumer advice for a film under the Commonwealth Act, section 22B (3) (Classification

1 of a publication, film or computer game that may be the same
2 as or similar to a classified item);

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

7 **8 Category 1 restricted publications**
8 **Section 26 (2)**

9 *substitute*

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

15 (3) If—

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

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

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

27 **9 Category 2 restricted publications**
28 **Section 27 (3)**

29 *substitute*

30 (3) If—

- 1 (a) a publication is reclassified under the Commonwealth Act,
2 section 39 (Reclassification etc. after 2 years) or 97A
3 (Reclassification); or
- 4 (b) the board revokes a classification for a publication under the
5 Commonwealth Act, section 22B (3) (Classification of a
6 publication, film or computer game that may be the same as or
7 similar to a classified item);
- 8 it is sufficient compliance with subsection (2) (b) for 30 days after
9 the decision to reclassify or revoke takes effect if the publication
10 bears the determined markings applying to the publication before
11 the reclassification or revocation.

12 **10 New sections 27A and 27B**

13 *insert*

14 **27A Sale or delivery of publications contrary to conditions**

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

20 Maximum penalty: 30 penalty units.

21 **27B Consumer advice for unrestricted publications**

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

28 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 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 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 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 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—

- (a) a film, publication or computer game is reclassified under the Commonwealth Act, section 39 (Reclassification etc. after 2 years) or 97A (Reclassification); or
- (b) the board revokes a classification for a film, publication or computer game under the Commonwealth Act, section 22B (3)

1 (Classification of a publication, film or computer game that
2 may be the same as or similar to a classified item);
3 it is sufficient compliance with subsection (2) for 30 days after the
4 decision to reclassify or revoke takes effect if the determined
5 markings applying to the film, publication or computer game before
6 the reclassification or revocation are published.

7 **19 New section 70**

8 *insert*

9 **70 Application of certain amendments made by**
10 **Classification (Publications, Films and Computer**
11 **Games) (Enforcement) Amendment Act 2001**

- 12 (1) The amendment of this Act, made by the *Classification*
13 *(Publications, Films and Computer Games) (Enforcement)*
14 *Amendment Act 2001* (the **amending Act**), that inserted section 39
15 (3A) and (3B) applies in relation to a computer game whether
16 published before or after the commencement of the amending Act.
- 17 (2) The amendments of this Act, made by the amending Act (other than
18 the amendment that inserted section 39 (3A) and (3B) and the
19 amendments made by schedule 1 of that Act), do not apply in
20 relation to a publication, film or computer game—
- 21 (a) first published before the commencement of that Act; or
22 (b) for which an application for classification was made before the
23 commencement of that Act.
- 24 (3) This section expires on 31 December 2002.

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

Amendment [1.1]

**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 *Interpretation Act 1967*, s 11F and s 11G).

- 1 **[1.2] Section 3, definitions of *approved advertisement*,**
2 ***business day*, *classification certificate*, *computer game*,**
3 ***court*, *film*, *publication*, *publish* and *submittable***
4 ***publication***
5 *omit*
- 6 **[1.3] Section 3, definitions (as amended by this Act)**
7 *relocate to dictionary*
- 8 **[1.4] Section 3, remainder**
9 *omit*
- 10 **[1.5] Section 7, heading**
11 *substitute*
- 12 **7 Exhibition of films—display of notice about**
13 **classifications**
- 14 **[1.6] Section 17, heading**
15 *substitute*
- 16 **17 Sale of films—display of notice about classifications**
- 17 **[1.7] Section 22 (2)**
18 *omit*
19 *or refuse*
- 20 **[1.8] Section 34, heading**
21 *substitute*
- 22 **34 Computer games—display of notice about classifications**
- 23 **[1.9] Section 40 (1)**
24 *substitute*

Amendment [1.10]

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

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

7 **[1.10] Section 53 (1)**

8 *substitute*

- 9 (1) If—

10 (a) an advertisement for a film classified R is published in a
11 publication; and

12 (b) a film classified X is sold to a person responding to the
13 advertisement;

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

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

18 **[1.11] Section 54A, heading**

19 *substitute*

20 **54A Definitions for pt 6**

21 **[1.12] Section 54A (1)**

22 *insert*

23 *offence*, against this Act, includes an offence against the *Crimes Act*
24 *1900*, part 8 (Aiding and abetting, accessories, attempts, incitement
25 and conspiracy) in relation to an offence against this Act.

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

2 *omit*

3 (1) In

4 *substitute*

5 In

6 **[1.14] Section 54A (2)**

7 *omit*

8 **[1.15] Section 54E (4) (d)**

9 *substitute*

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

13 **[1.16] Section 54N (1) (d) (ii)**

14 *substitute*

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

17 **[1.17] Section 54T, heading**

18 *substitute*

19 **54T Meaning of *X film* for div 6.4**

20 **[1.18] Section 54V, penalty**

21 *substitute*

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

1 **[1.19] Section 54W (4), penalty**

2 *substitute*

3 Maximum penalty: 50 penalty units.

4 **[1.20] Section 54Y, heading**

5 *substitute*

6 **54Y Definitions for div 6.5**

7 **[1.21] Section 54Y (1)**

8 *omit*

9 (1) In

10 *substitute*

11 In

12 **[1.22] Section 54Y (2)**

13 *renumber as section 54YA*

14 **[1.23] New section 54YA, heading**

15 *insert*

16 **54YA When proceedings for defined offence determined**

17 **[1.24] Section 54Y (3) to (5)**

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

19 **[1.25] New section 54YB, heading**

20 *insert*

21 **54YB Extension of defined period**

22 **[1.26] Section 60**

23 *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 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, for division 6.4 (Enforcement)—see section 54T.

[1.28] Renumbering of divisions

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

