

1995

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

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

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

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**A BILL  
FOR**

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

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

**PART I—PRELIMINARY**

**Short title**

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

**Commencement**

- 2. (1)** Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence—

- (a) on the day fixed under subsection 2 (2) of the Commonwealth Act;  
or
- (b) if the provisions referred to in that subsection do not commence under that subsection within the period of 12 months beginning on the day on which the Commonwealth Act receives Royal Assent—on the first day after the end of that period.

### Interpretation

3. In this Act, unless the contrary intention appears—

10 “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” has the same meaning as in the Commonwealth Act;

15 “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*;

20 “Board” means the Classification Board established by section 45 of the Commonwealth Act;

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

25 “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 section 25 of the Commonwealth Act;

30 “classified” means classified under the Commonwealth Act and includes re-classified under that Act;

“Commonwealth Act” means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth;

“computer game” has the same meaning as in the Commonwealth Act;

35 “consumer advice” means consumer advice determined under section 20 of the Commonwealth Act;

“court” means the Magistrates Court;

“demonstrate” includes exhibit, display, screen or make available for playing;

“Deputy Director” means the Deputy Director of the Board;

5 “determined fee” means the fee determined by the Minister under section 67 for the purposes of the provision in which the expression occurs;

“determined markings” means markings determined under section 8 of the Commonwealth Act;

10 “Director” means the Director of the Board;

“exhibit”, in relation to a film, means project or screen;

“film” has the same meaning as in the Commonwealth Act;

“guardian” means an adult who is exercising parental control over a minor;

15 “place” includes vacant land, premises, a vehicle, a vessel and an aircraft;

“publication” has the same meaning as in the Commonwealth Act;

20 “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” has the same meaning as in the Commonwealth Act;

“restricted publications area” means any premises, or part of a premises, constructed and managed in accordance with section 62;

25 “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” has the same meaning as in the Commonwealth Act.

### 30 **Exhibition of film**

4. For the purposes of 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.

### **Application**

- 5 This Act does not apply to broadcasting services to which the *Broadcasting Services Act 1992* of the Commonwealth applies.

## **PART II—FILMS**

### *Division 1—Exhibition of films*

#### **Exhibition of film in public place**

- 10 6. (1) A person shall not, without reasonable excuse, exhibit a film in a public place unless the film is classified.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

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

- 15 (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.

Penalty: 50 penalty units.

#### **Display of notice about classifications**

- 20 7. 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.

Penalty: 5 penalty units.

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

- 25 8. (1) A person shall not, without reasonable excuse, exhibit in a public place a film classified RC.

Penalty: 100 penalty units or imprisonment for 12 months, 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.

- 30 Penalty: 50 penalty units or imprisonment for 6 months, or both.

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

9. 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.

**Penalty:**

- 5 (a) in the case of a film classified MA or R, or an unclassified film which is subsequently classified MA or R—20 penalty units;
- (b) in the case of a film classified X, or an unclassified film which is subsequently classified X—50 penalty units or imprisonment for 6 months, or both;
- 10 (c) in the case of a film classified RC, or an unclassified film which is subsequently classified RC—100 penalty units or imprisonment for 12 months, or both.

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

**10. A person who—**

- 15 (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;

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

Penalty: 20 penalty units.

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

25 **11.** 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.

Penalty: 5 penalty units.

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

30 **12. (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.

**Penalty:**

- (a) in the case of a film classified RC, or an unclassified film which is subsequently classified RC—50 penalty units or imprisonment for 6 months, or both;

- (b) in the case of a film classified X, or an unclassified film which is subsequently classified X—50 penalty units;
- (c) in the case of a film classified R, or an unclassified film which is subsequently classified R—20 penalty units.

5 (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.

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

13. (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.

Penalty: 50 penalty units.

15 (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.

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

14. (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
- 25 (b) the minor is not accompanied by his or her parent or guardian.

Penalty: 10 penalty units.

(2) For the purposes of 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
- 30 (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);
- (b) the defendant believed on reasonable grounds that the minor was 15 years of age or over; or
- 5 (c) the defendant believed on reasonable grounds that the person accompanying the minor was the minor's parent or guardian.

***Division 2—Sale of films***

**Unclassified and RC films**

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

Penalty: 100 penalty units or imprisonment for 12 months, or both.

**Classified films**

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

- 15 (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.

Penalty: 50 penalty units.

**Display of notice about classifications**

20 17. 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.

Penalty: 5 penalty units.

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

25 18. (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.

Penalty: 10 penalty units.

30 (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.

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.

5           Penalty: 30 penalty units.

(4) If a film is reclassified under section 39 of the Commonwealth Act, 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.

10   **Keeping unclassified or RC films with other films**

15   19. (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 are each guilty of an offence punishable, on conviction, by a fine not exceeding 100 penalty units or imprisonment for 12 months, 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—

- 20           (a) the film was on the premises; or  
             (b) the film was an unclassified film or a film classified RC.

**X films**

20. If a film is classified X, a person shall not, without reasonable excuse—

- 25           (a) display the film for sale except in a restricted publications area located in premises in a prescribed area;  
             (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.

Penalty:

- 30           (a) for a contravention of paragraph (a) or (b)—50 penalty units or imprisonment for 6 months, or both;  
             (b) for a contravention of paragraph (c)—30 penalty units.

### Sale or delivery of certain films to minors

21. (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.

5 Penalty: 100 penalty units or imprisonment for 12 months, 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.

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

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

15 (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;

(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

20 (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.

25 (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.

Penalty: 5 penalty units.

30 (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.

Penalty: 10 penalty units.

(6) It is a defence to a prosecution against subsection (5) to prove that the defendant believed on reasonable grounds that—

(a) the person was 15 years of age or older;

- (b) the parent or guardian of the minor had consented to the sale or delivery; or
- (c) 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 3—Miscellaneous*

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

- 10       **22. (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 subsection 21 (4); and
  - (b) that the person is under 18 years of age;
- 15       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).

Penalty for a contravention of subsection (2): 5 penalty units.

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

- 20       **23.** 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;
- 25       knowing that the film is, or would be, so classified.

Penalty:

- (a) in the case of a film classified RC, or an unclassified film which is subsequently classified RC—100 penalty units or imprisonment for 12 months, or both;
- 30       (b) in the case of a film classified X, or an unclassified film which is subsequently classified X—50 penalty units or imprisonment for 6 months, or both;
- (c) in the case of a film classified R or MA, or an unclassified film which is subsequently classified R or MA—20 penalty units.

**Possession or copying of film for the purpose of sale or exhibition**

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

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

with the intention of selling or exhibiting the film.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

10 (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;

with the intention of selling or exhibiting the film or the copy.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

15 (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 film has been classified X, R, MA, M, PG or G.

20 (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 III—PUBLICATIONS**

**Sale of unclassified RC publications**

25 25. (1) A person shall not sell or deliver (other than for the purposes of classification or law enforcement)—

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

knowing that it is such a publication.

Penalty:

- 30 (a) in the case of a submittable publication—50 penalty units or imprisonment for 6 months, or both;  
(b) in the case of a publication classified RC—100 penalty units or imprisonment for 12 months, or both.

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

### Category 1 restricted publications

5        26. (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
- 10        (b) if the packaging is an opaque material—both the publication and the package bear the determined markings.

Penalty: 30 penalty units.

15        (2) If a publication is reclassified under section 39 of the Commonwealth Act, 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.

### Category 2 restricted publications

- 20        27. (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.

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

- 25        (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
  - 30        (b) publish a publication that is classified Category 2 restricted unless it bears the determined markings.

Penalty: 30 penalty units.

35        (3) If a publication is reclassified under section 39 of the Commonwealth Act, it is sufficient compliance with paragraph (1) (d) 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.

**Publications classified Unrestricted**

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

5 Penalty: 5 penalty units.

**Misleading or deceptive markings**

29. (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.

10 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.

Penalty: 30 penalty units.

15 (3) If a publication is reclassified under section 39 of the Commonwealth Act, 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.

**Sale of restricted publications to minors**

20 30. (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.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

25 (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.

Penalty: 50 penalty units or 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—

30 (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;

35 (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.

**Leaving publications in certain places**

5       **31. (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;

10      knowing that it is such a publication.

**Penalty:**

(a) in the case of 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 or imprisonment for 6 months, or both;

(b) in the case of a publication classified RC, or a submittable publication which is subsequently classified RC—100 penalty units or imprisonment for 12 months, or both.

20      **(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;

25      (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 subsection 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.

30      **(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.

5      **Penalty:**

- 10      (a) in the case of 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 or imprisonment for 6 months, or both;
- (b) in the case of a publication classified RC, or a submittable publication which is subsequently classified RC—100 penalty units or imprisonment for 12 months, or both.

- 15      (4) It is a defence to a prosecution for an offence against paragraph (3) (a) to prove that, since the offence was alleged to have been committed, the publication has been classified Unrestricted.

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

20      **32. (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.

**Penalty:**

- 25      (a) in the case of a submittable publication—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a publication classified RC—100 penalty units or imprisonment for 12 months, or both.

- 30      (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.

- 35      (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 IV—COMPUTER GAMES

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

5       **33. (1)** A person shall not, without reasonable excuse, sell or demonstrate a computer game in a public place unless the computer game is classified.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

**(2)** A person shall not, without reasonable excuse, sell or demonstrate a computer game in a public place unless the computer game—

10       (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.

Penalty: 50 penalty units.

#### Display of notice about classifications

15       **34.** 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.

Penalty: 5 penalty units.

#### 20       **RC computer games**

**35.** A person shall not, without reasonable excuse—

(a) sell; or

(b) demonstrate in a public place;

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

Penalty: 100 penalty units or imprisonment for 12 months, or both.

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

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

30       (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.

Penalty: 20 penalty units.

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

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

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

Penalty:

- 10 (a) in the case of a computer game classified RC or an unclassified computer game which is subsequently classified RC —100 penalty units or imprisonment for 12 months, or both;
- (b) in the case of a computer game classified MA (15+) or an unclassified computer game which is subsequently classified MA (15+)—20 penalty units.

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

38. (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.

20 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
- 25 (b) the defendant was the parent or guardian of the minor.

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

30 39. (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.

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.

5           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.

10           Penalty: 30 penalty units.

(4) If a computer game is reclassified under section 39 of the Commonwealth Act, 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.

15

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

20           40. (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 are each guilty of an offence punishable, on conviction, by a fine not exceeding 100 penalty units or imprisonment for 12 months, or both.

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

(a) the defendant did not know, and could not reasonably have known, that the computer game was on the premises; or

(b) the computer game was an unclassified computer game or a computer game classified RC.

#### **30   Sale or delivery of certain computer games to minors**

41. (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.

Penalty: 100 penalty units or imprisonment for 12 months, 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.

5 Penalty: 20 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (2) to prove that the defendant believed on reasonable grounds that—

- 10 (a) the minor was 15 years of age or older;  
(b) the parent or guardian of the minor had consented to the sale or delivery; or  
(c) the defendant did not know, or could not reasonably have known—

(i) the computer game was classified MA (15+); or

15 (ii) in the case of an unclassified computer game which is subsequently classified MA (15+)—it would subsequently be so classified.

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

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

- 20 (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.

Penalty:

- 25 (a) in the case of a computer game classified RC or an unclassified computer game which is subsequently classified RC —100 penalty units or imprisonment for 12 months, or both;  
30 (b) in the case of a computer game classified MA (15+) or an unclassified computer game which is subsequently classified MA (15+)—20 penalty units.

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

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

- 35 (a) a computer game classified RC; or

(b) an unclassified computer game;

with the intention of selling or demonstrating the computer game.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

5 (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.

10 Penalty: 100 penalty units or imprisonment for 12 months, 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.

15 (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 V—ADVERTISEMENTS

### Certain advertisements not to be published

20 44. (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 section 29 of the Commonwealth Act and, if submitted, would be refused approval; or

25 (b) if the advertisement has been refused approval under section 29 of the Commonwealth Act.

Penalty: 50 penalty units.

(2) A person shall not, without reasonable excuse, publish an advertisement for a film or publication or computer game—

30 (a) if the advertisement is approved under section 29 of the Commonwealth Act—in an altered form to the form in which it is approved; or

- (b) if the advertisement is approved under section 29 of the Commonwealth Act subject to conditions—except in accordance with those conditions.

Penalty: 10 penalty units.

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

- 10 **45. (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 under section 33 of the Commonwealth Act.

Penalty: 50 penalty units.

- (2) A person shall not, without reasonable excuse, publish an advertisement for—

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

Penalty: 30 penalty units.

- 20 (3) For the purposes of 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.

**Screening of advertisements with feature films**

- 25 **46.** 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

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

- 30 Penalty: 30 penalty units.

### Liability of occupier for certain advertisements

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

- 5 (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;
- (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
- 10 (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.

Penalty: 30 penalty units.

### Sale of feature films with advertisements

- 15 48. 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

- 20 Penalty: 30 penalty units.

### Advertisements with computer games

- 25 49. 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

Item	Column 2 Main game	Column 3 Advertised computer game
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

Penalty: 30 penalty units.

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

5 **50. (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

10 (b) the determined markings and consumer advice are displayed—

(i) in the manner determined by the Director under section 8 of the Commonwealth Act; and

(ii) so as to be clearly visible, having regard to the size and nature of the advertisement.

15 Penalty: 10 penalty units.

20 **(2)** If a film, publication or computer game is reclassified under section 39 of the Commonwealth Act, 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.

**Misleading or deceptive advertisements**

25 **51. (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.

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.

5           Penalty: 30 penalty units.

(3) If a film, publication or computer game is reclassified under section 39 of the Commonwealth Act, 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  
10       30 days after the decision to reclassify takes effect.

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

15       52. (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.

          Penalty: 30 penalty units.

20       (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.

          Penalty: 30 penalty units.

25       (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 is guilty of an offence punishable, on conviction, by a fine not exceeding 30 penalty units.

### **Advertisements and X films**

30       53. (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;

35       the person who, without reasonable excuse, sells the film is guilty of an offence punishable, on conviction, by a fine not exceeding 50 penalty units or 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.

Penalty: 30 penalty units.

5 (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

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

#### **Classification symbols etc. to be published with advertisements**

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

(a) a film;

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

(c) a computer game;

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

Penalty: 5 penalty units.

### **PART VII—EXEMPTIONS**

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

55. (1) The Minister may, on application, by notice, exempt a film, publication, computer game or advertisement specified in the notice from such of the provisions of the Act as are specified in the notice.

30 (2) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the notice.

#### **Exemption—approved organisations**

56. (1) The Minister 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 the Act as are so specified.

(2) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the notice.

- 5 (3) An application shall—
- (a) be in writing;
  - (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—
- 10 (i) a synopsis of the story or events depicted in the film; and
- (ii) the determined fee.

#### Organisations may be approved

57. (1) The Minister may, on application, by notice in the *Gazette*, approve an organisation for the purposes of this Part.

- 15 (2) In considering whether to approve an organisation, the Minister shall have regard to—
- (a) the purpose for which the organisation was formed;
  - (b) the extent to which the organisation carries on activities of a medical, scientific, educational, cultural or artistic nature;
  - 20 (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.

25 (3) An approval takes effect on the date of publication of the notice referred to in subsection (1).

(4) Where the Minister 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 (2), the Minister shall, by notice in writing to the organisation—

- 30 (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.
- (5) The Minister may—
- (a) on the expiration of the period referred to in paragraph (4) (b); and

- (b) after taking into consideration any representations made by the organisation;

by notice in writing, revoke the approval.

- 5 (6) 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 (5).

### Notice of decisions

58. (1) Where the Minister makes a decision—

(a) refusing to exempt—

- 10 (i) a film, publication, computer game or advertisement under section 55; or

(ii) an organisation under section 56;

(b) specifying provisions of the Act from which a film, publication, computer game or advertisement is exempt under section 55;

- 15 (c) specifying provisions of the Act from which an organisation is exempt under section 56;

(d) specifying conditions subject to which an exemption is given under section 55 or 56;

(e) refusing to approve an organisation under subsection 57 (1); or

(f) revoking an approval under subsection 57 (5);

20 the Minister 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 subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

### Review of decisions

25 59. Application may be made to the Administrative Appeals Tribunal for a review of a decision referred to in section 58.

## PART VIII—MISCELLANEOUS

### Corporations—penalties

30 60. 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.

**Restricted publications area—construction and management**

61. (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—

- 5 (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.

10 (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 prescribed form 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.

15 **Restricted publications area—offences**

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

Penalty: 10 penalty units.

20 (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.

Penalty: 50 penalty units.

**Evidence**

25 63. 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;
- 30 (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.

### Commencement of prosecution for an offence

64. 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—

- 5           (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.

### Publication to prescribed person or body

10          65. 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;
- 15           (b) a publication classified Category 1 restricted, Category 2 restricted or RC; or
- (c) a submittable publication.

### Conduct of directors, servants and agents

20          66. (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
- 25           (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(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
- 30           (b) the body's or person's reasons for the intention, opinion, belief or purpose.

35          (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  
5 (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.  
10

(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.

**Power of Minister to determine fees**

15 67. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

**Regulations**

68. The Executive may make regulations for the purposes of this Act.

**Repeal**

20 69. The *Film Classification Act 1971* and the *Publications Control Act 1989* are repealed.

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**NOTE**

**Penalty units**

See section 33AA of the *Interpretation Act 1967*.