

SOUTH AUSTRALIA

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER  
GAMES) ACT 1995**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **17 October 1996**.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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# CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) ACT 1995

being

Classification (Publications, Films and Computer Games) Act 1995  
No. 88 of 1995 [Assented to 7 December 1995]<sup>1</sup>

as amended by

Statutes Amendment (Attorney-General's Portfolio) Act 1996 No. 67 of 1996 [Assented to 15 August 1996]<sup>2</sup>

<sup>1</sup> Came into operation 1 January 1996: *Gaz.* 21 December 1995, p. 1751.

<sup>2</sup> Came into operation 17 October 1996: *Gaz.* 17 October 1996, p. 1361.

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix 1.

**An Act to provide for the establishment and enforcement of schemes for the classification of publications, films and computer games; to repeal the Classification of Films for Public Exhibition Act 1971 and the Classification of Publications Act 1974; to amend the Classification of Theatrical Performances Act 1978; and for other purposes.**

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

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

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Objects**

3. The objects of this Act are—

- (a) to establish a scheme complementary to the scheme for the classification of publications, films and computer games set out in the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth; and
- (b) to make provision for South Australian classification authorities that may, when satisfied that it is appropriate to do so in particular cases, make classification decisions with respect to publications, films or computer games (that will prevail in South Australia over any inconsistent decisions made under the Commonwealth Act); and
- (c) to make provision for the enforcement of classification decisions applying in South Australia; and
- (d) to prohibit the publication of certain publications, films and computer games; and
- (e) to provide protection against prosecution under laws relating to obscenity, indecency, offensive materials or blasphemy when classified publications, films or computer games are published in accordance with this Act.

**Interpretation**

4. In this Act—

"**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 or older;

"**advertisement**" has the same meaning as in the Commonwealth Act;

**"approved advertisement"** means—

- (a) an advertisement approved by the Council or the Minister under Part 3 of this Act for a publication, film or computer game; or
- (b) if an advertisement for a publication, film or computer game has not been approved under Part 3 of this Act—the advertisement as approved under the Commonwealth Act;

**"approved form"** means a form approved by the National Director and published in the *Commonwealth of Australia Gazette*;

**"business day"** means a day other than a Saturday or a Sunday or other public holiday under the *Holidays Act 1910*;

**"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;

**"classified"** means—

- (a) in relation to a publication, film or computer game—classified by the Council or the Minister under Part 3 of this Act; or
- (b) in relation to a publication, film or computer game that is not classified under Part 3 of this Act—classified under the Commonwealth Act;

**"Commonwealth Act"** means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, as amended from time to time;

**"computer game"** has the same meaning as in the Commonwealth Act;

**"consumer advice"** means—

- (a) consumer advice determined by the Council or the Minister under Part 3 of this Act for a film or computer game; or
- (b) in relation to a film or computer game for which no consumer advice is determined under Part 3 of this Act—consumer advice determined under the Commonwealth Act for the film or game;

**"contentious material"** has the same meaning as in the Commonwealth Act;

**"Council"** means the South Australian Classification Council established under Part 2 of this Act;

**"demonstrate"** includes exhibit, display, screen, play or make available for playing;

**"determined markings"** means markings determined under section 8 of the Commonwealth Act;

**"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 under 15;

"**minor**" means a person who is under 18;

"**National Board**" means the Classification Board established by the Commonwealth Act;

"**National Classification Code**" means the National Classification Code as in force from time to time under the Commonwealth Act;

"**national classification guidelines**" means the classification guidelines as in force from time to time under the Commonwealth Act;

"**National Director**" means Director of the National Board appointed under the Commonwealth Act;

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

"**publication**" has the same meaning as in the Commonwealth Act;

"**public place**" means a place that the public is entitled to use or that 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 premises, or a part of premises, constructed and managed in accordance with the requirements under Part 9 of this Act;

"**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 and includes a publication called in by the National Director under Schedule 1 of this Act;

"**work**" has the same meaning as in the Commonwealth Act.

*Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.*

### **Exhibition of film**

**5.** 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**

6. (1) This Act does not apply to broadcasting services to which the Commonwealth Broadcasting Act applies.

(2) In subsection (1)—

"**Commonwealth Broadcasting Act**" means the *Broadcasting Services Act 1992* of the Commonwealth, as amended from time to time, or an Act enacted in substitution for that Act.

**PART 2**  
**SOUTH AUSTRALIAN CLASSIFICATION COUNCIL**

**South Australian Classification Council**

7. The *South Australian Classification Council* is established.

**Membership**

8. (1) The Council is to consist of six members appointed by the Governor, of whom—

- (a) one is to be a legal practitioner; and
- (b) one is to be a person with expertise relating to the psychological development of young children and adolescents; and
- (c) one is to be a person with wide experience in education.

(2) One member will be appointed by the Governor to chair meetings of the Council.

(3) The Governor may appoint a person to be the deputy of a member and the deputy may perform or exercise the functions and powers of that member in the member's absence.

(4) A member's appointment will be for a term, not exceeding three years, specified in the instrument of appointment and such a member will, at the expiration of a term of appointment, be eligible for reappointment.

(5) The Governor may remove a member from office for—

- (a) misconduct; or
- (b) neglect of duty; or
- (c) incapacity to carry out satisfactorily the duties of office; or
- (d) failure to carry out satisfactorily the duties of office.

(6) The office of a member of the Council becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) is removed from office by the Governor under subsection (5).

(7) On the office of a member of the Council becoming vacant, a person must be appointed under this section to the vacant office.

**Remuneration**

9. The members of the Council are entitled to receive such allowances and expenses as may be determined by the Governor.

**Vacancies or defects in appointment of members**

**10.** An act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or any defect in the appointment of a member.

**Immunity from personal liability**

**11.** (1) A member of the Council incurs no personal liability for an honest act or omission of the Council or the member in the performance or exercise, or purported performance or exercise, of functions or powers under this Act.

(2) A liability that would, but for subsection (1), lie against a member lies instead against the Crown.

**Proceedings**

**12.** (1) A quorum of the Council consists of three members.

(2) The member appointed to chair the Council will preside at meetings of the Council at which that member is present.

(3) If the member appointed to chair the Council is absent from a meeting of the Council, a member chosen by the members present at the meeting will preside at the meeting.

(4) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Council.

(5) Each member present at a meeting of the Council has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(6) The Council must have accurate minutes kept of its proceedings and make them available to all members and the Minister.

(7) Subject to this section, the Council may determine its own procedures.

**Registrar of Council**

**13.** (1) There is to be a Registrar of the Council.

(2) The Registrar is to be the person occupying a position in the Public Service specified by the Minister.

**Powers**

**14.** (1) For the purpose of performing its functions, the Council may—

(a) inform itself as to any matter before the Council in such manner as the Council thinks fit; and

(b) invite interested persons to make written or oral submissions in relation to any matter before the Council; and

(c) if the Council considers it necessary to do so for the purpose of dealing with a matter before it—by notice in writing signed by the Registrar or a Council member on behalf of the Council and served on a person, require the person—

(i) to furnish specified information in writing; or

- (ii) to attend before the Council and answer truthfully relevant questions put to him or her by a member of the Council or by a person appearing before the Council; or
  - (iii) to produce a publication, film or computer game or a document of any kind; and
- (d) require any information furnished to it to be verified by statutory declaration; and
- (e) require a person appearing before it (whether or not in compliance with a requirement of the Council) to make an oath or affirmation (which may be administered by the Registrar or a member of the Council) to answer truthfully relevant questions put to him or her by a member of the Council or by a person appearing before the Council; and
- (f) retain for a reasonable period and examine a publication, film, computer game or document produced to the Council; and
- (g) obtain expert or technical advice or assistance from a person on terms and conditions approved by the Minister.
- (2) A person must not fail to comply with a requirement of the Council under subsection (1).

Maximum penalty: Division 6 fine.

(3) A person need not furnish information, answer a question or produce anything in compliance with a requirement of the Council under subsection (1) if to do so would tend to incriminate the person.

(4) A publication, film, computer game or document produced to the Council must, if the Minister so requires, be made available to the Minister for the Minister's examination.

**PART 3  
CLASSIFICATION BY SOUTH AUSTRALIAN AUTHORITIES**

**DIVISION 1—TYPES OF CLASSIFICATIONS**

**Types of classifications**

**15.** (1) The following are the different types of classifications for publications in ascending order:

**Unrestricted**

**Category 1 restricted**

**Category 2 restricted**

**RC** (Refused Classification).

(2) The following are the different types of classifications for films in ascending order:

**G** (General)

**PG** (Parental Guidance)

**M** (Mature)

**MA** (Mature Accompanied)

**R** (Restricted)

**X** (Restricted)

**RC** (Refused Classification).

(3) The following are the different types of classification for computer games in ascending order:

**G** (General)

**G (8+)** (Mature)

**M (15+)** (Mature)

**MA (15+)** (Mature Restricted)

**RC** (Refused Classification).

**DIVISION 2—CLASSIFICATION PROCESS**

**Classification by Council or Minister**

**16.** (1) Subject to this section, the Council—

(a) may, of its own initiative, and must, if so required by the Minister, examine a publication, film or computer game for classification purposes;

(b) may classify a publication, film or computer game.

(2) If the Minister requires the Council to provide advice as to the classification of a publication, film or computer game—

(a) the Council must provide the Minister with advice as to the classification of the publication, film or game;

(b) the Council may not, unless the Minister otherwise determines, proceed itself to classify the publication, film or game;

- (c) the Minister may, after considering the Council's advice as to the classification of the publication, film or game, classify the publication, film or game.

(3) Notice of a classification under this section must be published in the *South Australian Government Gazette* and the classification takes effect on a date specified in the notice or, if no date is so specified, the date of publication of the notice.

#### **Relationship with classification under Commonwealth Act**

**17.** (1) The Council or the Minister may classify a publication, film or computer game despite the fact that it is classified under the Commonwealth Act.

(2) A classification decided by the Council or the Minister has effect to the exclusion of any classification of the same publication, film or computer game under the Commonwealth Act.

#### **Classification of publications, films and games in accordance with national code and guidelines**

**18.** Publications, films and computer games are to be classified by the Council or the Minister in accordance with the National Classification Code and the national classification guidelines.

#### **Matters to be considered in classification**

**19.** The matters to be taken into account by the Council or the Minister in making a decision on the classification of a publication, film or computer game include—

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) the literary, artistic or educational merit (if any) of the publication, film or game; and
- (c) the general character of the publication, film or game, including whether it is of a medical, legal or scientific character; and
- (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.

#### **Classification of publication forming part of a series**

**19A.** Where a publication under consideration by the Council or the Minister consists of an issue or instalment of a series of publications that are issued periodically or by instalment, the Council or the Minister (as the case may be) may classify future publications of the same series on the basis of the publication presently under consideration.

#### **Considered form of film or computer game to be final**

**20.** (1) The Council or the Minister must assume, in classifying a film or computer game, that the film or game will be published only in the form in which it is considered for classification.

(2) A classification decided by the Council or the Minister for a film is taken to be the classification for each work comprised in the film.

#### **Consumer advice for films and computer games**

**21.** (1) The Council or the Minister may, when classifying a film or computer game, determine consumer advice giving information about the content of the film or game.

(2) A determination of consumer advice under this section has effect to the exclusion of any determination of consumer advice for the same film or computer game under the Commonwealth Act.

(3) Notice of a determination under this section must be published in the *South Australian Government Gazette* and the determination takes effect on a date specified in the notice or, if no date is so specified, the date of publication of the notice.

**Classification of films or computer games containing advertisements**

**22.** A film or computer game must not be classified under this Part if it contains—

- (a) an advertisement for a film or computer game that has not been classified; or
- (b) an advertisement for a film or computer game that has a higher classification.

**Declassification of classified films or computer games**

**23.** (1) Subject to subsection (2), if a film or computer game classified under this Part is modified, it becomes unclassified when the modification is made.

(2) Subsection (1) does not apply to a modification that consists of including an advertisement, other than an advertisement to which section 22 applies.

**Reclassification**

**24.** A publication, film or computer game that is classified under this Part may not be reclassified unless two years have elapsed since the date on which its current classification took effect.

**DIVISION 3—APPROVAL OF ADVERTISEMENTS**

**Application of Division**

**25.** This Division applies only to a publication, film or computer game classified under this Part.

**Approval of advertisements**

**26.** (1) The Council may approve or refuse to approve an advertisement for a publication, film or computer game either on an application for approval or on its own initiative.

(2) An approval of an advertisement may be subject to conditions.

(3) An application for approval of an advertisement must be—

- (a) in writing; and
- (b) made in writing in a form approved by the Council; and
- (c) signed by or on behalf of the applicant; and
- (d) accompanied by the prescribed fee.

(4) The matters to be taken into account in deciding whether to approve an advertisement for a publication, film or computer game are the same as those to be taken into account when deciding the classification of publications, films or computer games respectively.

(5) The Council must refuse to approve an advertisement if, in the opinion of the Council, the advertisement—

- (a) describes, depicts or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it should not be approved; or
- (b) describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person who is, or who looks like, a child under 16 (whether the person is engaged in sexual activity or not); or
- (c) promotes crime or violence, or incites or instructs in matters of crime or violence; or
- (d) is used, or is likely to be used, in a way that is offensive to a reasonable adult.

(6) The Council must refuse to approve an advertisement for a publication, film or computer game if the publication, film or game has been classified RC.

(7) A decision to approve or refuse to approve an advertisement for a publication, film or computer game under this section has effect to the exclusion of any decision to approve or refuse to approve the same advertisement under the Commonwealth Act.

(8) A decision of the Council to approve or refuse to approve an advertisement under this section takes effect on a date specified by the Council.

#### **Calling in advertisements**

**27.** (1) The Council may, by notice in writing signed by the Registrar or a Council member on behalf of the Council and given to the publisher of a publication, film or computer game, require the publisher to submit to the Council a copy of every advertisement used or intended to be used in connection with the publishing of the publication, film or game.

(2) A person to whom a notice is given under this section must comply with the notice within three business days after receiving the notice.

Maximum penalty:      Division 6 fine

(3) An advertisement required under this section to be submitted for approval will, if not submitted to or approved by the Council, be taken to have been refused approval.



**PART 4**  
**FILMS—EXHIBITION, SALE, ETC.**

**DIVISION 1—EXHIBITION OF FILMS**

**Exhibition of film in public place**

**28.** A person must not exhibit a film in a public place unless the film—

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

Maximum penalty: Division 6 fine.

**Display of notice about classifications**

**29.** A person who exhibits a film in a public place must keep a notice in the approved form about classifications for films on display in a prominent place in that public place so that the notice is clearly visible to the public.

Maximum penalty: Division 8 fine.

**Exhibition of RC and X films**

**30.** A person must not exhibit in a public place or so that it can be seen from a public place—

- (a) an unclassified film that would, if classified, be classified RC or X; or
- (b) a film classified RC or X.

Maximum penalty: Division 5 fine.

**Prohibition of exhibition of R or MA films in certain places**

**31.** (1) The Minister may prohibit the exhibition of a film classified R or MA—

- (a) in a drive-in theatre; or
- (b) in any other public place if, in the Minister's opinion, it is possible to see a film from an ordinary vantage point outside the place when it is exhibited in the place.

(2) A prohibition under this section—

- (a) may relate to a specified film or class of films and to drive-in theatres generally or a specified drive-in theatre or other place;
- (b) may be imposed, varied or revoked by notice published in the *South Australian Government Gazette* or by notice in writing served on the person who exhibits films in the theatre or place to which the notice relates.

(3) A person must not exhibit a film in contravention of a notice under this section.

Maximum penalty: Division 7 fine.

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

**32.** 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 that would, if classified, be classified RC, X or R is to be exhibited in a public place,

must not permit the minor to attend the exhibition of the film.

Maximum penalty: Division 7 fine.

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

**33.** A minor who is 15 or older must not attend the exhibition in a public place of a film classified RC, X or R, knowing that the film is so classified.

Maximum penalty: Division 9 fine.

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

**34.** (1) A person must not exhibit in a place, other than a public place, in the presence of a minor—

- (a) an unclassified film that would, if classified, be classified RC or X; or
- (b) a film classified RC or X.

Maximum penalty: Division 4 fine.

(2) A person must not exhibit in a place, other than a public place, in the presence of a minor, a film classified R unless the person is a parent or guardian of the minor.

Maximum penalty: Division 6 fine.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) to prove that the defendant believed on reasonable grounds that the minor was an adult.

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

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

Maximum penalty: Division 6 fine.

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

- (a) the minor produced to the defendant or the defendant's employee or agent acceptable proof of age before the minor was admitted to the public place; or
- (b) the defendant or the defendant's employee or agent believed on reasonable grounds that the minor was an adult.

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

**36.** (1) A person must not exhibit in a public place a film classified MA if—

- (a) a minor under 15 is present during any part of the exhibition; and
- (b) the minor is not accompanied by his or her parent or guardian.

Maximum penalty: Division 8 fine.

(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
- (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 or the defendant's employee or agent took all reasonable steps to ensure that a minor was not present in contravention of subsection (1); or
- (b) the defendant or the defendant's employee or agent believed on reasonable grounds that the minor was 15 or older; or
- (c) the defendant or the defendant's employee or agent believed on reasonable grounds that the person accompanying the minor was the minor's parent or guardian.

**DIVISION 2—SALE OF FILMS**

**Sale of films**

**37.** A person must not sell a film unless the film—

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

Maximum penalty: Division 6 fine.

**Sale of RC and X films**

**38.** A person must not sell—

- (a) an unclassified film that would, if classified, be classified RC or X; or
- (b) a film classified RC or X.

Maximum penalty: Division 5 fine.

**Display of notice about classifications**

**39.** A person who sells films on any premises must keep a notice in the approved form about classifications for films on display in a prominent place on the premises so that the notice is clearly visible to the public.

Maximum penalty: Division 8 fine.

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

**40.** (1) A person must not 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: Division 7 fine.

(2) A person must not 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: Division 7 fine.

(3) A person must not 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: Division 7 fine.

(4) If a film is reclassified under this Act or 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.

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

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

Maximum penalty: Division 6 fine.

(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 the film was on the premises.

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

**42.** (1) A person must not sell or deliver to a minor—

(a) an unclassified film that would, if classified, be classified RC or X; or

(b) a film classified RC or X.

Maximum penalty: Division 4 fine.

(2) A person must not sell or deliver to a minor a film classified R unless the person is a parent or guardian of the minor.

Maximum penalty: Division 6 fine.

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

- (a) the minor produced to the defendant or the defendant's employee or agent acceptable proof of age before the defendant sold or delivered the film to the minor and the defendant or the defendant's employee or agent believed on reasonable grounds that the minor was an adult; or
- (b) the minor was employed by the defendant or the defendant's employer and the delivery took place in the course of that employment.

(5) A minor who is 15 or older must not buy a film classified RC, X or R, knowing that it is so classified.

Maximum penalty: Division 9 fine.

(6) A person must not sell or deliver to a minor under 15 a film classified MA unless the person is a parent or guardian of the minor.

Maximum penalty: Division 8 fine.

(7) It is a defence to a prosecution for an offence against subsection (5) to prove that the defendant or the defendant's employee or agent believed on reasonable grounds that—

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

### **DIVISION 3—MISCELLANEOUS**

#### **Power to demand particulars and expel minors**

**43.** (1) A person exhibiting, selling or delivering films who has reasonable cause to suspect that the exhibition, sale or delivery of a film to another person is, or would be, in contravention of this Part may demand the name, age and address of the other person.

(2) A member of the police force who has reasonable cause to suspect that the exhibition, sale or delivery of a film to a person is, or would be, in contravention of this Part may demand the person's name, age and address.

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

Maximum penalty: Division 9 fine.

(4) If the exhibitor of a film that is being, or is about to be, exhibited in a public place, or an employee or agent of the exhibitor or a member of the police force, suspects on reasonable grounds that a person's presence during the exhibition of the film is, or would be, in contravention of this Part, the exhibitor, employee, agent or member of the police force may—

- (a) require the person to leave the place; and
- (b) if the person fails to comply with such a requirement—use reasonable force to expel the person from the place.

(5) A person must not fail to comply with a requirement under subsection (4).

Maximum penalty: Division 9 fine.

**Leaving films in certain places**

**44.** (1) A person must not leave in a public place or, without the occupier's permission, on private premises—

(a) an unclassified film that would, if classified, be classified RC or X; or

(b) a film classified RC or X,

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

Maximum penalty: Division 5 fine.

(2) A person must not leave in a public place or, without the occupier's permission, on private premises—

(a) an unclassified film that would, if classified, be classified R or MA; or

(b) a film classified R or MA,

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

Maximum penalty: Division 8 fine.

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

**45.** (1) A person must not possess or copy—

(a) an unclassified film that would, if classified, be classified RC or X; or

(b) a film classified RC or X,

with the intention of exhibiting the film or copy in contravention of this Part or selling the film or copy.

Maximum penalty: Division 5 fine.

(2) In proceedings for an offence against this section, evidence that a person made 10 or more copies of a film of a kind referred to in subsection (1) is evidence that the person intended to exhibit the film in contravention of this Part or sell the film and, in the absence of evidence to the contrary, is proof of that fact.

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**PART 5**  
**PUBLICATIONS—SALE, DELIVERY, ETC.**

**Sale of unclassified or RC publications**

**46.** (1) A person must not sell or deliver (other than for the purpose of classification or law enforcement) a publication classified RC, knowing that it is such a publication.

Maximum penalty:      Division 5 fine.

(2) A person must not sell or deliver (other than for the purpose of classification or law enforcement) a submittable publication, knowing that it is such a publication.

Maximum penalty:      Division 6 fine.

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

**Category 1 restricted publications**

**47.** (1) A person must not sell or deliver a publication classified Category 1 restricted unless—

- (a) it is contained in a sealed package made of opaque material; and
- (b) both the publication and the package bear the determined markings.

Maximum penalty:      Division 6 fine.

(2) If a publication is reclassified under this Act or the Commonwealth Act, it is sufficient compliance with subsection (1)(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.

**Category 2 restricted publications**

**48.** (1) A publication that is classified Category 2 restricted must not be—

- (a) sold, displayed or delivered except in a restricted publications area; or
- (b) delivered to a person who has not made a direct request for the publication; or
- (c) delivered to a person unless it is contained in a package made of opaque material; or
- (d) published unless it bears the determined markings.

(2) A person must not sell, display, deliver or publish a publication in contravention of subsection (1).

Maximum penalty:      Division 5 fine.

(3) If a publication is reclassified under this Act or the Commonwealth Act, it is sufficient compliance with subsection (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**

**49.** A person must not sell, deliver or publish a publication classified Unrestricted unless it bears the determined markings.

Maximum penalty: Division 9 fine.

**Misleading or deceptive markings**

**50.** (1) A person must not 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: Division 7 fine.

(2) A person must not 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: Division 7 fine.

(3) If a publication is reclassified under this Act or 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 certain publications to minors**

**51.** (1) A person must not sell or deliver to a minor a publication classified RC or Category 2 restricted.

Maximum penalty: Division 4 fine.

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

Maximum penalty: Division 6 fine.

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

**Leaving or displaying publications in certain places**

**52.** (1) A person must not leave in a public place or, without the occupier's permission, on private premises, or display in such a manner as to be visible to persons in a public place, a publication classified RC or Category 2 restricted, knowing that it is such a publication.

Maximum penalty: Division 5 fine.

(2) A person must not leave in a public place or, without the occupier's permission, on private premises, 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,

knowing that it is such a publication.

Maximum penalty: Division 6 fine.

(3) It is a defence to a prosecution for an offence against subsection (1) to prove, in a case where a publication classified Category 2 restricted was left or displayed in a public place, that the defendant believed on reasonable grounds that the public place was a restricted publications area.

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

(a) that since the offence was alleged to have been committed, the publication has been classified Unrestricted; or

(b) in a case where a publication classified Category 1 restricted was left or displayed in a public place, that the public place was a shop or stall and the requirements under this Part for packaging and markings were complied with in relation to the publication.

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

**53.** (1) A person must not possess or copy a publication classified RC, with the intention of selling the publication or the copy.

Maximum penalty: Division 5 fine.

(2) A person must not possess or copy a submittable publication with the intention of selling the publication or the copy.

Maximum penalty: Division 6 fine.

(3) It is a defence to a prosecution for an offence against subsection (2) 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.

**PART 6**  
**COMPUTER GAMES—SALE, DEMONSTRATION, ETC.**

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

**54.** A person must not sell a computer game, or demonstrate a computer game in a public place, unless the game—

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

Maximum penalty: Division 6 fine.

**Display of notice about classification**

**55.** A person who sells or demonstrates a computer game in a public place must keep a notice in the approved form about classifications for computer games on display in a prominent place in that public place so that the notice is clearly visible to the public.

Maximum penalty: Division 8 fine.

**Unclassified and RC computer games**

**56.** (1) A person must not—

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

a computer game classified RC or an unclassified computer game that would, if classified, be classified RC.

Maximum penalty: Division 5 fine.

(2) A minor who is 15 or older must not buy a computer game classified RC, knowing that it is so classified.

Maximum penalty: Division 9 fine.

**MA (15+) computer games**

**57.** A person must not demonstrate a computer game classified MA (15+) in a public place unless—

- (a) the determined markings are exhibited before the 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: Division 8 fine.

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

**58.** (1) A person must not demonstrate so that it can be seen from a public place—

- (a) an unclassified computer game that would, if classified, be classified RC; or
- (b) a computer game classified RC.

Maximum penalty: Division 5 fine.

(2) A person must not demonstrate so that it can be seen from a public place that is outside the place where it is demonstrated—

- (a) an unclassified computer game that would, if classified, be classified MA (15+); or
- (b) a computer game classified MA (15+).

Maximum penalty: Division 8 fine.

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

**59.** (1) A person must not demonstrate in a place, other than a public place, in the presence of a minor—

- (a) an unclassified computer game that would, if classified, be classified RC; or
- (b) a computer game classified RC.

Maximum penalty: Division 4 fine.

(2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the minor was an adult.

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

**60.** (1) A person must not sell a computer game unless the determined markings relevant to the classification of the game and relevant consumer advice, if any, are displayed on the container, wrapping or casing of the game.

Maximum penalty: Division 7 fine.

(2) A person must not sell an unclassified computer game if the container, wrapping or casing in which the game is sold bears a marking that indicates or suggests that the game has been classified.

Maximum penalty: Division 7 fine.

(3) A person must not sell a classified computer game if the container, wrapping or casing in which the game is sold bears a marking that indicates or suggests that the game is unclassified or has a different classification.

Maximum penalty: Division 7 fine.

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

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

**61.** (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.

Maximum penalty: Division 6 fine.

(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 the computer game was on the premises.

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

**62.** (1) A person must not sell or deliver to a minor—

(a) an unclassified computer game that would, if classified, be classified RC; or

(b) a computer game classified RC.

Maximum penalty: Division 4 fine.

(2) A person must not sell or deliver to a minor who is under 15 a computer game classified MA (15+) unless the person is a parent or guardian of the minor.

Maximum penalty: Division 8 fine.

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

(a) the minor was 15 or older; or

(b) the parent or guardian of the minor had consented to the sale or delivery.

**Power to demand particulars and expel unaccompanied minors under 15**

**63.** (1) A person demonstrating, selling or delivering computer games who has reasonable cause to suspect that the demonstration, sale or delivery of a computer game to another person is, or would be, in contravention of this Part may demand the name, age and address of the other person.

(2) A member of the police force who has reasonable cause to suspect that the demonstration, sale or delivery of a computer game to a person is, or would be, in contravention of this Part may demand the person's name, age and address.

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

Maximum penalty: Division 9 fine.

(4) If the demonstrator of a computer game classified MA (15+) that is being, or is about to be, demonstrated in a public place, or an employee or agent of the demonstrator or a member of the police force, suspects on reasonable grounds that a person's attendance at the demonstration is, or would be, contrary to restrictions that the demonstrator is required to enforce under this Part, the demonstrator, employee, agent or member of the police force may—

- (a) require the person to leave the place; and
- (b) if the person fails to comply with such a requirement—use reasonable force to expel the person from the place.

(5) A person must not fail to comply with a requirement under subsection (4).

Maximum penalty: Division 9 fine.

**Leaving computer games in certain places**

**64.** (1) A person must not leave in a public place or, without the occupier's permission, on private premises—

- (a) an unclassified computer game that would, if classified, be classified RC; or
- (b) a computer game classified RC,

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

Maximum penalty: Division 5 fine.

(2) A person must not leave in a public place, or without the occupier's permission, on private premises—

- (a) an unclassified computer game that would, if classified, be classified MA (15+); or
- (b) a computer game classified MA (15+),

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

Maximum penalty: Division 8 fine.

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

**65.** (1) A person must not possess or copy—

- (a) an unclassified computer game that would, if classified, be classified RC; or
- (b) a computer game classified RC,

with the intention of demonstrating the game or copy in contravention of this Part or selling the game or copy.

Maximum penalty: Division 5 fine.

(2) In proceedings for an offence against this section, evidence that a person made 10 or more copies of a computer game of a kind referred to in subsection (1) is evidence that the person intended to demonstrate the game in contravention of this Part or sell the game and, in the absence of evidence to the contrary, is proof of that fact.

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**PART 7  
CONTROL OF ADVERTISING**

**Certain advertisements not to be published**

- 66.** A person must not publish an advertisement for a film, publication or computer game—
- (a) if the advertisement has not been submitted for approval under this Act or the Commonwealth Act and, if submitted, would be refused approval; or
  - (b) if the advertisement has been refused approval under this Act or the Commonwealth Act; or
  - (c) if the advertisement is approved under this Act or the Commonwealth Act, in an altered form to the form in which it is approved; or
  - (d) if the advertisement is approved under this Act or the Commonwealth Act subject to conditions, except in accordance with those conditions.

Maximum penalty:      Division 6 fine.

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

- 67.** (1) A person must not publish an advertisement for—
- (a) an unclassified film, other than a film in relation to which a certificate of exemption has been granted under Part 3 of the Commonwealth Act; or
  - (b) a film classified RC or X; or
  - (c) a submittable publication; or
  - (d) a publication classified RC; or
  - (e) an unclassified computer game; or
  - (f) a computer game classified RC.

Maximum penalty:      Division 6 fine.

(2) 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 must be taken to have published it.

**Screening of advertisements with feature films**

**68.** A person must not 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 1 of an item in the Table and the advertised film has a classification specified opposite it in column 2 of that item.

TABLE

Item	Column 1 Feature film	Column 2 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

Maximum penalty: Division 7 fine.

**Liability of occupier for certain advertisements**

**69.** (1) An occupier of a public place must not screen in the public place an advertisement for a film classified R or MA.

Maximum penalty: Division 7 fine.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that—
- (a) if the advertised film is classified MA, the advertisement was screened during a program for the exhibition of a film classified R or MA; or
  - (b) if the advertised film is classified R, the advertisement was screened during a program for the exhibition of a film classified R; or
  - (c) the place in which the advertisement was screened was a restricted publications area.

**Sale of feature films with advertisements**

**70.** A person must not 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 1 of an item in the Table and the advertised film has a classification specified opposite it in column 2 of that item.

TABLE

Item	Column 1 Feature film	Column 2 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

Maximum penalty: Division 7 fine.



**Advertisements with computer games**

**71.** (1) A person must not sell a computer game ("the main game") that is accompanied by an advertisement for another computer game unless the main game has a classification specified in column 1 of an item in the Table and the advertised game has a classification specified opposite it in column 2 of that item.

**TABLE**

<b>Item</b>	<b>Column 1 Main game</b>	<b>Column 2 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: Division 7 fine.

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

**72.** (1) A person must not publish an advertisement for a classified film, classified publication or classified computer game unless—

- (a) the advertisement contains the determined markings relevant to the classification of the film, publication or 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 section 8 of the Commonwealth Act; and
  - (ii) so as to be clearly visible, having regard to the size and nature of the advertisement.

Maximum penalty: Division 7 fine.

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

**73.** (1) A person must not publish an advertisement for an unclassified film, unclassified publication or unclassified computer game with a marking that indicates or suggests that the film, publication or game is classified.

Maximum penalty: Division 7 fine.

(2) A person must not 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 game is unclassified or has a different classification.

Maximum penalty: Division 7 fine.

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

**Advertisements for Category 2 restricted publications**

**74.** (1) A person must not publish an advertisement for a publication classified Category 2 restricted.

Maximum penalty: Division 6 fine.

(2) It is a defence to a prosecution for an offence against subsection (1) to prove that the advertisement was published—

- (a) in a publication classified Category 2 restricted; or
- (b) in a restricted publications area; or
- (c) by way of printed or written material delivered to a person at the written request of the person.

(3) If an advertisement for 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.

Maximum penalty: Division 6 fine.

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

**75.** A person must not 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 or publications or computer games respectively.

Maximum penalty: Division 7 fine.

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**PART 8  
EXEMPTIONS**

**Exemption of film, publication, computer game or advertisement**

**76.** The Minister or the National Director may, on application, direct in writing that this Act does not apply, to the extent and subject to any condition specified in the direction, to or in relation to a film, publication, computer game or advertisement.

**Exemption of approved organisation**

**77.** (1) The Minister or the National Director may, on application under this section, direct in writing that this Act does not apply, or any of the provisions of this Act do not apply, to an organisation approved under this Part in relation to the exhibition of a film at an event, where the film and the event are specified in the direction.

(2) An application for a direction under subsection (1) may be made by an approved organisation and must—

- (a) be in writing; and
- (b) specify the film that the organisation intends to exhibit and the event at which the film is to be exhibited; and
- (c) be accompanied by—
  - (i) a synopsis of the story or events depicted in the film; and
  - (ii) the prescribed fee.

**Ministerial directions or guidelines**

**78.** In considering whether to make a direction under this Part, the Minister or the National Director must give effect to any directions or guidelines issued by the Minister in relation to the application of this Act.

**Organisation may be approved**

**79.** (1) The Minister, by notice published in the *South Australian Government Gazette*, or the National Director, by notice published in the *Commonwealth of Australia Gazette*, may, on application, approve an organisation for the purposes of this Part.

(2) In considering whether to approve an organisation, the Minister or National Director must 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.

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

(4) An approval may be revoked by the person who gave the approval if, because of a change in any matter referred to in subsection (2), he or she considers that it is no longer appropriate that the organisation be approved.

(5) The Minister or National Director, as the case may be, must notify an organisation in writing of a decision to revoke an approval.

(6) Revocation of an approval takes effect on the date of notification of the decision to revoke or on a later date specified in the notice.

**PART 9  
MISCELLANEOUS**

**Powers of entry, seizure and forfeiture**

**80.** (1) A member of the police force, or a person authorised in writing by the Minister, may, without charge, enter a public place at which the member or person believes on reasonable grounds that a film is being, or is about to be, exhibited.

(2) A member of the police force may enter a place that the member believes on reasonable grounds is being used for or in connection with the sale or publication of publications, films or computer games.

(3) A member of the police force may seize any publication, film, computer game or other thing that the member believes on reasonable grounds affords evidence of, or has been, is being or is about to be, used in the commission of an offence against this Act or an offence relating to obscenity, indecency or offensive material.

(4) A court convicting a person of an offence against this Act or an offence relating to obscenity, indecency or offensive material may order that anything seized under this section be forfeited to the Crown.

(5) A person must not hinder or obstruct a member of the police force, or a person authorised in writing by the Minister, in the exercise of a power under this section.

Maximum penalty:      Division 6 fine.

(6) This section does not limit the powers that a member of the police force may exercise under the *Summary Offences Act 1953*.

**Restricted publications area—construction and management**

**81.** (1) A restricted publications area must 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—

(a) must be fitted with a gate or door capable of excluding persons from the area; and

(b) must be closed by means of that gate or door when the area is not open to the public.

(3) A restricted publications area must be managed by an adult who must 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 must cause a notice containing the following words, in legible letters or numerals not less than 15 millimetres in height and of a colour that contrasts with the background colour of the notice, 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:

**RESTRICTED PUBLICATIONS AREA—PERSONS UNDER 18 MAY NOT ENTER.  
THE PUBLIC ARE WARNED THAT SOME PUBLICATIONS DISPLAYED HEREIN  
MAY CAUSE OFFENCE.**

**Restricted publications area—offences**

**82.** (1) The manager of a restricted publications area must not permit a minor to enter that area.

Maximum penalty: Division 6 fine.

(2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the minor was an adult.

**Evidence**

**83.** (1) In proceedings for an offence, a certificate signed, or purporting to be signed, by the National Director or the Deputy of the National Director and stating that—

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

is evidence of, and in the absence of evidence to the contrary is proof of, the facts stated in it.

(2) In proceedings for an offence, a certificate signed, or purporting to be signed, by the Registrar of the Council and stating that—

- (a) a film, publication or computer game is classified under Part 3 of this Act as specified in the certificate; or
- (b) a film, publication or computer game is not classified under Part 3 of this Act, or is not classified under Part 3 of this Act at a classification specified in the certificate; or
- (c) an advertisement described in the certificate is approved under Part 3 of this Act, or has been refused approval under Part 3 of this Act, or has not been approved under Part 3 of this Act,

is evidence, and in the absence of evidence to the contrary is proof of, the facts stated in it.

**Protection for classified material against prosecutions under indecency, etc., laws**

**84.** (1) Despite any law relating to obscenity, indecency, offensive materials or blasphemy, a person does not commit an offence against any such law by producing or taking part in the production of, publishing, distributing, selling, exhibiting, displaying, delivering or otherwise dealing with or being associated with a publication, film or computer game that is classified (whether at the time of the alleged offence or subsequently).

(2) Subsection (1) does not apply to—

- (a) a film that is classified RC or X at the time of the alleged offence;

(b) a publication that is classified RC at the time of the alleged offence;

(c) a computer game that is classified RC at the time of the alleged offence.

(3) Subsection (1) does not apply to—

(a) a film that is not classified at the time of the alleged offence but is subsequently classified RC or X;

(b) a publication that is not classified at the time of the alleged offence but is subsequently classified RC;

(c) a computer game that is not classified at the time of the alleged offence but is subsequently classified RC.

(4) Subsection (1) does not relieve a person from an obligation to comply with a provision of this Act.

(5) The burden of proving that subsection (1) is applicable in proceedings for an offence relating to obscenity, indecency, offensive materials or blasphemy lies on the defendant.

#### **Commencement of prosecution for offence**

**85.** (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) must 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) Subject to subsection (1), a prosecution for an offence against this Act may be commenced within two years after the date on which the offence is alleged to have been committed.

#### **Proceeding against body corporate**

**86.** (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—

(a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) the director, employee or agent had that state of mind.

(2) If a director, employee or agent of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual or apparent authority, the body corporate must be taken, for the purposes of a prosecution for an offence against this Act, also to have engaged in the conduct unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If a body corporate is found guilty of an offence against this Act, the court may impose a fine not exceeding twice the maximum amount which the court could otherwise impose in respect of the offence.

### **Employees and agents**

**87.** (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show that—

- (a) an employee or agent of the person had that state of mind; and
- (b) the employee or agent engaged in the conduct within the scope of his or her actual or apparent authority.

(2) If an employee or agent of a person other than a body corporate engages in conduct on behalf of the person within the scope of his or her actual or apparent authority, the person must be taken, for the purposes of a prosecution for an offence against this Act, also to have engaged in the conduct unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

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

**88.** Despite anything to the contrary in this Act, a person may publish to a prescribed person or a prescribed body, or to a person or body of a prescribed class or description 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;
- (c) a submittable publication.

### **Service**

**89.** A notice or document required or authorised by this Act to be given to or served on a person is taken to have been given to or served on the person if—

- (a) it is personally delivered to the person; or
- (b) it is sent by post addressed to the person's last known place of residence or business; or
- (c) it is left at the person's last known place of residence or business with a person who is apparently at least 16 and is apparently living or employed at the place.

### **Annual report**

**90.** (1) The Council must, on or before 31 October in each year, submit to the Minister a report on its operations during the period of 12 months ending on the preceding 30 June.

(2) The Minister must, within six sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

### **Regulations**

**91.** The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.



**SCHEDULE 1**

*National Director's Call-in Powers*

**Calling in submittable publications for classification**

**1.** (1) If—

- (a) the National Director has reasonable grounds to believe that a publication is a submittable publication; and
- (b) the publication is being published in South Australia, or the National Director has reasonable grounds to believe that it will be published in South Australia,

the National Director may, by notice in writing given to the publisher of the publication, require the publisher to submit an application for classification of the publication, or of subsequent issues of the publication, by the National Board.

(2) The National Director must cause notice of a decision under subclause (1) to be published in the *Commonwealth of Australia Gazette*.

(3) A person to whom a notice under this clause is given must, within three business days after receiving the notice, comply with the notice.

Maximum penalty: Division 6 fine.

(4) It is a defence to a prosecution for an offence against subclause (3) to prove that the defendant did not intend—

- (a) to publish the publication in South Australia; or
- (b) to cause, authorise, permit or license the publication to be published in South Australia.

**Calling in computer games for classification**

**2.** (1) If—

- (a) the National Director has reasonable grounds to believe that a computer game is likely to contain contentious material; and
- (b) the computer game is being published in South Australia, or the National Director has reasonable grounds to believe that it will be published in South Australia,

the National Director may, by notice in writing given to the publisher of the game, require the publisher to submit an application for classification of the game.

(2) The National Director must cause notice of a decision under subclause (1) to be published in the *Commonwealth of Australia Gazette*.

(3) A person to whom a notice under this clause is given must, within three business days after receiving the notice, comply with the notice.

Maximum penalty: Division 6 fine.

(4) It is a defence to a prosecution for an offence against subclause (3) to prove that the defendant did not intend—

- (a) to publish the computer game in South Australia; or
- (b) to cause, authorise, permit or license the computer game to be published in South Australia.

**Calling in advertisements**

3. (1) The National Director may, by notice in writing given to—

- (a) the publisher of a publication that—
  - (i) the National Director has reasonable grounds to believe is a submittable publication; and
  - (ii) is being published in South Australia, or the National Director has reasonable grounds to believe will be published in South Australia; or
- (b) the publisher of a classified film that is being published in South Australia, or that the National Director has reasonable grounds to believe will be published in South Australia; or
- (c) the publisher of a computer game that is being published in South Australia, or that the National Director has reasonable grounds to believe will be published in South Australia,

require the publisher to submit to the National Board for approval a copy of every advertisement used or intended to be used in connection with the publishing.

(2) A person to whom a notice under this clause is given must, within three business days after receiving the notice, comply with the notice.

Maximum penalty: Division 6 fine.

(3) It is a defence to a prosecution for an offence against subclause (2) to prove that the defendant did not intend—

- (a) to publish the publication, film or computer game in South Australia; or
- (b) to cause, authorise, permit or license the publication, film or computer game to be published in South Australia.

**SCHEDULE 2***Repeals, Transition and Consequential Amendments***Acts repealed**

1. The following Acts are repealed:

- (a) the *Classification of Films for Public Exhibition Act 1971*;
- (b) the *Classification of Publications Act 1974*.

**Transitional and saving provisions**

2. (1) In this section—

"**Ordinance**" means *Classification of Publications Ordinance 1983* of the Australian Capital Territory.

(2) A film that has been classified as a "G", "PG", "M", "MA" or "R" film under the repealed *Classification of Films for Public Exhibition Act 1971* before the commencement of this subclause is taken to have been classified G, PG, M, MA or R respectively under the Commonwealth Act.

(3) A film that has been classified as an "X" film or has been refused classification under the Ordinance before the commencement of this subclause is taken to have been classified X or RC respectively under the Commonwealth Act.

(4) An advertisement relating to a film that has been approved or refused approval under the repealed *Classification of Films for Public Exhibition Act 1971* before the commencement of this subclause is taken to have been approved or refused approval, as the case may be, under the Commonwealth Act.

(5) A publication that has been classified as suitable for unrestricted distribution or as a Category 1 restricted publication or a Category 2 restricted publication or has been refused classification under the repealed *Classification of Publications Act 1974* before the commencement of this subclause is taken to have been classified Unrestricted, Category 1 restricted or Category 2 restricted or RC respectively under the Commonwealth Act.

(6) A reference in subclause (5) to a publication refused classification includes a reference to a publication to which the Classification of Publications Board refrained to assign a classification.

(7) A computer game that has been classified under the Ordinance with a classification specified in column 1 of an item in the Table before the commencement of this subclause is taken to have been classified under the Commonwealth Act with a classification specified opposite it in column 2 of that item.

**TABLE**

<b>Item</b>	<b>Column 1 Ordinance</b>	<b>Column 2 Commonwealth Act</b>
1	"G"	G
2	"G(8+)"	G(8+)
3	"M(15+)"	M(15+)
4	"MA(15+)"	MA(15+)

(8) A computer game that has been refused, or is taken to have been refused, classification under the Ordinance before the commencement of this subclause is taken to have been classified RC under the Commonwealth Act.

(9) Nothing in this Act applies to or in relation to a computer game published before the date of commencement of this subclause unless the computer game has been classified or refused classification.

(10) Advertising matter in relation to a computer game that has been approved or refused approval under the Ordinance before the commencement of this subclause is taken to have been approved or refused approval under the Commonwealth Act.

(11) The *Acts Interpretation Act 1915* applies, except to the extent of any inconsistency with the provisions of this Schedule, to a repeal effected by this Schedule.

**Amendment of Classification of Theatrical Performances Act**

3. The *Classification of Theatrical Performances Act 1978* is amended—

(a) by striking out subsections (2) and (3) of section 5 and substituting the following subsections:

(2) The Board is to be constituted of the persons who are for the time being members of the South Australian Classification Council established under the *Classification (Publications, Films and Computer Games) Act 1995*.

(3) The person for the time being appointed to chair the South Australian Classification Council will be taken to have been appointed to chair the Board.;

(b) by striking out subsections (3) and (4) of section 6 and substituting the following subsections:

(3) The member appointed to chair the Board will preside at meetings of the Board at which that member is present.

(4) If the member appointed to chair the Board is absent from a meeting of the Board, a member chosen by the members present at the meeting will preside at the meeting.

(4a) The member presiding at a meeting of the Board will, in the event of an equality of votes, have a second or casting vote.

**APPENDIX 1**

**LEGISLATIVE HISTORY**

Section 19A:

inserted by 67, 1996, s. 7

**APPENDIX 2**

**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*