

South Australia

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

An Act to provide for the establishment and enforcement of schemes for the classification of publications, films and computer games; and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **4 November 2001**.*

**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]¹

as amended by

Statutes Amendment (Attorney-General's Portfolio) Act 1996 No. 67 of 1996 [Assented to 15 August 1996]²
**Classification (Publications, Films and Computer Games) (Miscellaneous) Amendment Act 2001
No. 29 of 2001 [Assented to 3 August 2001]³**

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² Came into operation 17 October 1996: *Gaz.* 17 October 1996, p. 1361.

³ **Came into operation 4 November 2001: *Gaz.* 20 September 2001, p. 4212.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

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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*.

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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;

"**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;

"**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.

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.

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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 in writing, within a specified time, specified information, verified (if the Council so requires) by statutory declaration; or

(ii) to attend before the Council at a specified time 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, within a specified time, a publication, film or computer game or a document of any kind; 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: \$5 000.

(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: \$5 000.

(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: \$5 000.

Expiation fee: \$315.

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: \$1 250.

Expiation fee: \$160.

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: \$10 000.

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: \$2 500.

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: \$2 500.

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: \$750.

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: \$20 000.

(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: \$5 000.

(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: \$5 000.

(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: \$1 250.

- (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 in order to use refreshment or other facilities provided within the premises in which the film is being exhibited for persons attending 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: \$5 000.

Expiation fee: \$315.

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: \$10 000.

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: \$1 250.

Expiation fee: \$160.

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: \$2 500.
Expiation fee: \$210.

(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: \$2 500.
Expiation fee: \$210.

(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: \$2 500.
Expiation fee: \$210.

(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: \$5 000.
Expiation fee: \$315.

(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: \$20 000.

(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: \$5 000.

(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: \$750.

(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: \$1 250.

(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: \$750.

(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: \$750.

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: \$10 000.

(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: \$1 250.

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: \$10 000.

(2) In proceedings for an offence against this section, evidence that a person was in possession of or made three 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.

**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.

Maximum penalty: \$10 000.

(2) A person must not sell or deliver (other than for the purpose of classification or law enforcement) a submittable publication.

Maximum penalty: \$5 000.

(2a) 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 publication was not classified RC or was not a submittable publication, as the case may be.

(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: \$5 000.

Expiation fee: \$315.

(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.

* * * * *

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

Maximum penalty: \$10 000.

(2a) A publication that is classified Category 2 restricted must not be—

- (a) delivered to a person unless it is contained in a package made of opaque material; or
- (b) published unless it bears the determined markings.

(2b) A person must not deliver or publish a publication in contravention of subsection (2a).

Maximum penalty: \$5 000.
Expiation fee: \$315.

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

Publications classified unrestricted

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

Maximum penalty: \$750.
Expiation fee: \$105.

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: \$2 500.
Expiation fee: \$210.

(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: \$2 500.
Expiation fee: \$210.

(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: \$20 000.

(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: \$5 000.

(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: \$10 000.

(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: \$5 000.

(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: \$10 000.

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

Maximum penalty: \$5 000.

(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: \$5 000.

Expiation fee: \$315.

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: \$1 250.

Expiation fee: \$160.

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: \$10 000.

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

Maximum penalty: \$750.

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: \$1 250.

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: \$10 000.

(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: \$1 250.

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: \$20 000.

(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: \$2 500.
Expiation fee: \$210.

(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: \$2 500.
Expiation fee: \$210.

(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: \$2 500.
Expiation fee: \$210.

(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: \$5 000.

Expiation fee: \$315.

(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: \$20 000.

(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: \$1 250.

(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: \$750.

(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: \$750.

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: \$10 000.

(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: \$1 250.

Possession or copying of computer game for 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: \$10 000.

(2) In proceedings for an offence against this section, evidence that a person was in possession of or made three 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.

**PART 7
CONTROL OF ADVERTISING**

Certain advertisements not to be published

66. (1) 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.

* * * * *

Maximum penalty: \$5 000.

(2) A person must not publish an advertisement for a film, publication or computer game—

- (a) 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
- (b) if the advertisement is approved under this Act or the Commonwealth Act subject to conditions, except in accordance with those conditions.

Maximum penalty: \$5 000.

Expiation fee: \$315.

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: \$5 000.

Expiation fee: \$315.

(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: \$2 500.

Expiation fee: \$210.

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: \$2 500.

Expiation fee: \$210.

(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: \$2 500.

Expiation fee: \$210.

Advertisements with computer games

71. 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

Item	Column 1 Main game	Column 2 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

Maximum penalty: \$2 500.

Expiation fee: \$210.

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: \$2 500.

Expiation fee: \$210.

(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: \$2 500.

Expiation fee: \$210.

(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: \$2 500.
Expiation fee: \$210.

(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: \$5 000.
Expiation fee: \$315.

(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: \$5 000.
Expiation fee: \$315.

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: \$2 500.
Expiation fee: \$210.

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, copying for 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) Subject to subsection (4a), 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.

(4a) If—

(a) a film, publication or computer game is seized under this section; and

(b) a person is convicted of a relevant offence in relation to the film, publication or computer game,

the film, publication or computer game is forfeited to the Crown on conviction.

(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: \$5 000.

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

(7) In this section—

"**relevant offence**" means an offence against section 30, 34(1), 38, 42(1), 44(1), 45, 46(1), 48(2), 51(1), 52(1), 53(1), 56, 58(1), 59, 62(1), 64(1) or 65.

Powers of authorised persons in Australian Public Service

80A. (1) The Minister may, by notice published in the *Gazette*, authorise a person or class of persons appointed under the Commonwealth Public Service Act to issue expiation notices in relation to offences against this Act or specified offences against this Act.

(2) The Minister may, by subsequent notice in the *Gazette*, vary or revoke a notice under this section.

(3) This section does not derogate from section 6(3) of the *Expiation of Offences Act 1996*.

(4) A person authorised to issue expiation notices under this section may exercise any power of a member of the police force under section 80.

(5) If a person authorised to issue expiation notices under this section has reasonable cause to suspect that a person has committed or is about to commit an offence against this Act, the authorised person may require the person to state his or her full name and usual place of residence.

(6) If a person authorised to issue expiation notices under this section has reasonable cause to suspect that a name or address as stated in response to a requirement under subsection (5) is false, the person may require the person making the statement to produce evidence of the correctness of the name or address as stated.

(7) A person must not—

- (a) hinder or obstruct a person authorised to issue expiation notices under this section, in the exercise of the powers under this section; or
- (b) refuse or fail to comply with a requirement made of the person in accordance with this section.

Maximum penalty: \$5 000.

(8) A person authorised to issue expiation notices under this section must carry identification in a form approved by the Minister and must produce it at the request of a person in relation to whom the authorised person has exercised, or intends to exercise, powers under this section.

(9) In this section—

"Commonwealth Public Service Act" means the *Public Service Act 1999* of the Commonwealth, as amended from time to time, or an Act enacted in substitution for that Act.

Forfeiture of other seized films, publications and computer games

80B. (1) Subject to the making of an order under this section, if—

- (a) proceedings are commenced for prescribed offences relating to 10 or more different products; and
- (b) the products were seized on the same day from the same premises,

any other products seized on that day from those premises may be retained by the Crown and, if 10 or more different products are forfeited to the Crown as a result of those proceedings, all of the other products not the subject of those proceedings are, at the expiry of the prescribed period, also forfeited to the Crown.

(2) The owner of any products liable to forfeiture under this section (or the owner's legal representative) must, on making a written request to the Commissioner of Police within two months after the prescribed date, be allowed to view the products at a time and place fixed by the Commissioner of Police.

(3) The owner of any products liable to forfeiture under this section may, within the prescribed period, apply to the Magistrates Court for an order for return of the products.

(4) An applicant for an order under this section must give notice of the application to the Commissioner of Police.

(5) The Commissioner of Police is a party to any proceedings for an order under this section.

(6) If an application is made for an order under this section, the products may be retained by the Crown until the application is determined but in all other respects the operation of subsection (1) is suspended until the application is determined.

(7) The Magistrates Court may, on an application under this section, order that a product to which the application relates be returned to its owner if satisfied, on the balance of probabilities—

(a) that the product—

- (i) in the case of a film—is classified with a classification other than X or RC; or
- (ii) in the case of a publication—is not a submittable publication or is classified with a classification other than RC; or
- (iii) in the case of a computer game—is classified with a classification other than RC; or

(b) that a prescribed offence was not committed in relation to the product.

(8) In this section—

"prescribed date" means the date on which a conviction is recorded, or an order made, as a result of which the total number forfeited of the products seized on the same day from the same premises first equals or exceeds 10;

"prescribed offence" means an offence against section 38, 45, 46, 48(2), 53, 56(1), or 65;

"prescribed period" means two months after the prescribed date or, if the owner of the products (or the owner's legal representative) requests that he or she be allowed to view the products, two months from the time fixed by the Commissioner of Police for the viewing;

"products" means copies of films, publications or computer games, and includes a combination of such products.

(9) For the purposes of this section, copies of a film, publication or computer game do not constitute different products.

Classification of seized items at request of defendant

80C. (1) If—

- (a) a film, publication or computer game has been seized under this Act and is in the possession or control of the prosecution; and
- (b) the owner of the film, publication or computer game, or a person charged with an offence relating to the film, publication or computer game, wishes to submit an application for classification of the film, publication or computer game to the National Board,

the prosecution must, at the request of the person, forward the person's application with the film, publication or computer game, or a copy of the film, publication or computer game, to the National Board on behalf of the person.

(2) However, the prosecution may refuse to forward the application until all fees that will be payable to the National Board and the postage costs associated with the application are provided to the prosecution.

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: \$5 000.

(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, an apparently genuine document purporting to be a certificate, or copy of a certificate, 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
- (ba) a film, publication or computer game was not, at a date specified in the certificate, classified under the Commonwealth Act or was, at a date specified in the certificate, 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, an apparently genuine document purporting to be a certificate, or copy of a certificate, 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
- (ba) a film, publication or computer game was not, at a date specified in the certificate, classified under Part 3 or was, at a date specified in the certificate, classified under Part 3 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.

Proof of classification by consent

83A. (1) Subject to subsection (2), if a person is charged with an offence against this Act, the prosecution may, prior to the trial of the matter, serve on the defendant a notice under this section.

(2) This section does not apply where the offence with which a person is charged involves an allegation that a film, publication or computer game was unclassified but would, if classified, be classified at a classification other than X or RC.

(3) A notice under this section must—

- (a) set out—
 - (i) the title or apparent title (if any) of the film, publication or computer game the subject of the notice; and
 - (ii) particulars of the offence in relation to which the notice is served; and
- (b) state that the defendant (or his or her legal representative) is entitled to view the film, publication or computer game; and
- (c) invite the defendant to indicate, by completing and signing a statement to that effect contained in the notice, that the defendant agrees that, on a specified date, the film, publication or computer game—
 - (i) was classified at the specified classification; or
 - (ii) was unclassified but would, if classified, have been of the specified classification; or
 - (iii) was unclassified,(as the case may require); and

- (d) state that if the notice is not received, completed and signed by the defendant, at the address specified in the notice within the period specified in the notice (being not less than the prescribed period), the defendant will, if found guilty of the offence in relation to which the notice is served, be liable to pay an amount equal to—
- (i) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a film, publication or computer game was unclassified but would, if classified, have been of a particular classification—the fee for classification of the film, publication or computer game; or
 - (ii) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a film, publication or computer game was classified at a particular classification or was unclassified—the fee for obtaining a certificate of a kind described in section 83 specifying the classification of the film, publication or computer game at that date or stating that the film, publication or computer game was unclassified at that date.

(4) A person served with a notice under this section (or the person's legal representative) must, on making a written request to the prosecution within 14 days from the date of service of the notice, be allowed to view the film, publication or computer game the subject of the notice at a time and place fixed by the prosecution.

(5) In proceedings for an offence against this Act, an apparently genuine document purporting to be a notice under this section containing a statement, completed and signed by the defendant, that the defendant agrees that, on a specified date, the film, publication or computer game—

- (a) was classified at a specified classification; or
- (b) was unclassified but would, if classified, have been of a specified classification; or
- (c) was unclassified,

will constitute sufficient proof of the matter so agreed without other evidence (in the absence of evidence that the document is not a notice under this section completed and signed by the defendant).

(6) If—

- (a) a person served with a notice under this section fails to deliver the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice; and
- (b) the person is found guilty of the offence in relation to which the notice was served,

the prosecution is entitled, on application to the court making the finding of guilt, to recover from the person an amount equal to the fee described in the notice.

(7) In proceedings in which an application referred to in subsection (6) is made, a certificate signed, or purporting to be signed, by the Commissioner of Police and stating—

- (a) that a person was served with a notice set out in the certificate and failed to deliver the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice; and

- (b) that a specified amount was paid as the fee described in the notice,

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

(8) If—

- (a) a notice is served under this section in relation to an offence involving an allegation that, on a specified date, a film, publication or computer game was unclassified but would, if classified, have been of a specified classification; and
- (b) the person served with the notice fails to deliver the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice; and
- (c) the film, publication or computer game is subsequently classified at a higher classification than the classification specified in the notice,

this section applies as if the notice had specified that higher classification.

(9) In this regulation—

"prescribed period" means 14 days from the date of service of the notice or, if the person served with the notice (or the person's legal representative) requests that he or she be allowed to view the film, publication or computer game the subject of the notice, 14 days from the time fixed by the prosecution for the viewing of the film, publication or computer game.

Proof of classification required

83B. (1) In proceedings for an offence against this Act involving an allegation that, on a specified date, a film, publication or computer game would, if classified, have been classified at a specified classification, that allegation may only be proved—

- (a) by proof that the film, publication or computer game has been subsequently classified at that classification; or
- (b) in accordance with section 83A.

(2) If a film, publication or computer game that was unclassified on a specified date is subsequently classified at a particular classification, then it will be taken to be the case that the film, publication or computer game would, if it had been classified at that specified earlier date, have been classified at that classification.

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. A prosecution for an offence against this Act may be commenced not later than 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.

(4) Where a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is imposed for the principal offence when committed by a natural person unless it is proved that the director could not, by the exercise of reasonable diligence, have prevented the commission of that 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: \$5 000.

Expiation fee: \$315.

(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: \$5 000.

Expiation fee: \$315.

(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: \$5 000.

Expiation fee: \$315.

(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

* * * * *

Transitional and saving provisions

2.

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(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.

* * * * *

APPENDIX

LEGISLATIVE HISTORY

Repeals

The *Classification (Publications, Films and Computer Games) Act 1995* repealed the following Acts:

Classification of Films for Public Exhibition Act 1971

Classification of Publications Act 1974

Amendments

The *Classification (Publications, Films and Computer Games) Act 1995* amended the *Classification of Theatrical Performances Act 1978*

Transitional Provisions

(Transitional provision from Classification (Publications, Films and Computer Games) (Miscellaneous) Amendment Act 2001, s. 19)

19. Section 80B of the principal Act applies in relation to proceedings for prescribed offences commenced after the commencement of that section whether the offences were committed before or after the commencement of that section.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Long title:	amended by 29, 2001, s. 18 (Sched.)
Section 2:	repealed by 29, 2001, s. 18 (Sched.)
Section 4:	definition of "Commonwealth Broadcasting Act" inserted by 29, 2001, s. 3
Section 6(2):	repealed by 29, 2001, s. 4
Section 14(1):	amended by 29, 2001, s. 5(a)-(c)
Section 14(1)(d):	repealed by 29, 2001, s. 5(d)
Section 14(2):	amended by 29, 2001, s. 18 (Sched.)
Section 19A:	inserted by 67, 1996, s. 7
Section 27(2):	amended by 29, 2001, s. 18 (Sched.)
Sections 28 - 30:	amended by 29, 2001, s. 18 (Sched.)
Section 31(3):	amended by 29, 2001, s. 18 (Sched.)
Sections 32 and 33:	amended by 29, 2001, s. 18 (Sched.)
Section 34(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Section 35(1):	amended by 29, 2001, s. 18 (Sched.)
Section 36(1):	amended by 29, 2001, s. 18 (Sched.)
Section 36(2):	amended by 29, 2001, s. 6
Sections 37 - 39:	amended by 29, 2001, s. 18 (Sched.)
Section 40(1) - (3):	amended by 29, 2001, s. 18 (Sched.)
Section 41(1):	amended by 29, 2001, s. 18 (Sched.)
Section 42(1), (2), (5) and (6):	amended by 29, 2001, s. 18 (Sched.)
Section 43(3) and (5):	amended by 29, 2001, s. 18 (Sched.)
Section 44(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Section 45(1):	amended by 29, 2001, s. 18 (Sched.)
Section 45(2):	amended by 29, 2001, s. 7
Section 46(1):	amended by 29, 2001, ss. 8(a), 18 (Sched.)
Section 46(2):	amended by 29, 2001, ss. 8(b), 18 (Sched.)
Section 46(2a):	inserted by 29, 2001, s. 8(c)
Section 47(1):	amended by 29, 2001, s. 18 (Sched.)
Section 48(1)(c) and (d):	repealed by 29, 2001, s. 9(a)
Section 48(2):	amended by 29, 2001, ss. 9(b), 18 (Sched.)

Section 48(2a) and (2b):	inserted by 29, 2001, s. 9(c)
Section 48(3):	amended by 29, 2001, s. 9(d)
Section 49:	amended by 29, 2001, s. 18 (Sched.)
Section 50(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Section 51(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Section 52(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Section 53(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Sections 54 and 55:	amended by 29, 2001, s. 18 (Sched.)
Section 56(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Section 57:	amended by 29, 2001, s. 18 (Sched.)
Section 58(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Section 59(1):	amended by 29, 2001, s. 18 (Sched.)
Section 60(1) - (3):	amended by 29, 2001, s. 18 (Sched.)
Section 61(1):	amended by 29, 2001, s. 18 (Sched.)
Section 62(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Section 63(3) and (5):	amended by 29, 2001, s. 18 (Sched.)
Section 64(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Section 65(1):	amended by 29, 2001, s. 18 (Sched.)
Section 65(2):	amended by 29, 2001, s. 10
Section 66:	redesignated as s. 66(1) by 29, 2001, s. 11(b); amended by 29, 2001, s. 18 (Sched.)
Section 66(c) and (d):	repealed by 29, 2001, s. 11(a)
Section 66(2):	inserted by 29, 2001, s. 11(b)
Section 67(1):	amended by 29, 2001, s. 18 (Sched.)
Section 68:	amended by 29, 2001, s. 18 (Sched.)
Section 69(1):	amended by 29, 2001, s. 18 (Sched.)
Section 70:	amended by 29, 2001, s. 18 (Sched.)
Section 71:	amended by 29, 2001, s. 18 (Sched.)
(previously incorrectly designated as s. 71(1))	
Section 72(1):	amended by 29, 2001, s. 18 (Sched.)
Section 73(1) and (2):	amended by 29, 2001, s. 18 (Sched.)
Section 74(1) and (3):	amended by 29, 2001, s. 18 (Sched.)
Section 75:	amended by 29, 2001, s. 18 (Sched.)
Section 80(2):	amended by 29, 2001, s. 12(a)
Section 80(4):	amended by 29, 2001, s. 12(b)
Section 80(4a):	inserted by 29, 2001, s. 12(c)
Section 80(5):	amended by 29, 2001, s. 18 (Sched.)
Section 80(7):	inserted by 29, 2001, s. 12(d)
Sections 80A - 80C:	inserted by 29, 2001, s. 13
Section 82(1):	amended by 29, 2001, s. 18 (Sched.)
Section 83(1):	amended by 29, 2001, s. 14(a), (b)
Section 83(2):	amended by 29, 2001, s. 14(c), (d)
Sections 83A and 83B:	inserted by 29, 2001, s. 15
Section 85:	substituted by 29, 2001, s. 16
Section 86(4):	inserted by 29, 2001, s. 17
Schedule 1	
Clause 1(3):	amended by 29, 2001, s. 18 (Sched.)
Clause 2(3):	amended by 29, 2001, s. 18 (Sched.)
Clause 3(2):	amended by 29, 2001, s. 18 (Sched.)
Schedule 2	
Clause 1	repealed by 29, 2001, s. 18 (Sched.)
Clause 2(1) - (8), (10) and (11):	repealed by 29, 2001, s. 18 (Sched.)
Clause 3:	repealed by 29, 2001, s. 18 (Sched.)