

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.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

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

### 3—Objects

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.

#### 4—Interpretation

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;

***additional content*** in a film that also comprises a classified film or an exempt film includes, but is not limited to—

- (a) additional scenes for the classified film or exempt film (such as alternative endings or deleted scenes); and
- (b) a film of the making of the classified film or exempt film; and
- (c) interviews with, and commentaries by, directors, actors and other persons involved with the making of the classified film or exempt film; and
- (d) such other material as is prescribed by the regulations,

but does not include—

- (e) a work; or
- (f) such other material as is prescribed by the regulations;

***additional content assessor*** means a person who is authorised by the National Director under section 22D of the Commonwealth Act;

***adult*** means a person who is 18 or older;

***adult-only premises*** means premises to which entry is restricted to adults;

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

***advertising scheme*** means the scheme determined from time to time under section 31 of 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 under section 8A of the Commonwealth Act;

***authorised television series assessor*** means a person authorised in accordance with the scheme determined under section 14B of the Commonwealth Act to prepare assessments of television series films;

***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;

**classifiable elements** has the same meaning as in the Commonwealth Act;

**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 publication, film or computer game; or
- (b) in relation to a publication, 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 publication, film or game;

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

**Convenor** means the Convenor of the National Review Board appointed under section 74 of 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;

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

**exempt film** has the same meaning as in 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;

**international flight**, in relation to an aircraft, means a flight that passes through the air space over the territory of more than one country and includes any part of the flight that may occur within Australia;

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

**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;

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

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

**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 Council or the Minister under Part 3 or the National Director under Schedule 1 of this Act;

**television series film** means a film that comprises—

- (a) 1 or more episodes of a television series; or
- (b) 1 or more episodes of a television series and series-related material if that material does not appear to be self-contained and produced for viewing as a discrete entity;

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

## 5—Exhibition of film

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.

## 6—Application of Act

This Act does not apply to—

- (a) exempt films or exempt computer games; or
- (ab) a publication, film or computer game that is subject to a conditional cultural exemption (within the meaning of the Commonwealth Act); or
- (b) broadcasting services to which the Commonwealth Broadcasting Act applies.

## Part 2—South Australian Classification Council

### 7—South Australian Classification Council

The *South Australian Classification Council* is established.

### 8—Membership

- (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.

### 9—Remuneration

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



## **10—Vacancies or defects in appointment of members**

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.

## **12—Proceedings**

- (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.

## **13—Registrar of Council**

- (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.

## **14—Powers**

- (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 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**

#### **15—Types of classifications**

- (1) The following are the different types of classifications for publications in ascending order:
- (a) **Unrestricted**
  - (b) **Category 1 restricted**
  - (c) **Category 2 restricted**
  - (d) **RC Refused Classification.**
- (2) The following are the different types of classifications for films in ascending order:
- (a) **G** General
  - (b) **PG** Parental Guidance
  - (c) **M** Mature
  - (d) **MA 15+** Mature Accompanied
  - (e) **R 18+** Restricted
  - (f) **X 18+** Restricted
  - (g) **RC** Refused Classification.
- (3) The following are the different types of classifications for computer games in ascending order:
- (a) **G** General

- (b) **PG** Parental Guidance
  - (c) **M** Mature
  - (d) **MA 15+** Mature Accompanied
  - (da) **R 18+** Restricted
  - (e) **RC** Refused Classification.
- (4) In subsections (1), (2) and (3), text that is not in bold is included by way of explanation and does not form part of the classification.

## **Division 2—Classification process**

### **16—Classification by Council or Minister**

- (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.

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

- (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.

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

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.

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

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.

### **19AA—Consideration of television series films**

- (1) The Council or the Minister may, for the purposes of the assessment of a television series film within the ambit of this section for the purposes of classifying the film, take into account an assessment of the film prepared by an authorised television assessor and furnished in the prescribed manner.
- (2) A television series film is within the ambit of this section if—
  - (a) at least 1 of the episodes of the television series film has, before the making of the application, been broadcast in Australia on a national broadcasting service, a commercial broadcasting service, a subscription broadcasting service or a community broadcasting service; and
  - (b) the applicant for classification is of the opinion that the film would, if classified, be classified at a particular classification that is R 18+ or a lower classification.
- (3) An assessment prepared by an authorised television assessor must satisfy the requirements specified in the scheme established under section 14B of the Commonwealth Act.

### **19A—Classification of publication forming part of a series**

- (1) 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 declare that the classification granted to that publication applies also to—
  - (a) all future publications of the same series; or
  - (b) a specified number of future publications of the same series; or
  - (c) all future publications of the same series published within a specified period.
- (2) If the Council or the Minister makes a declaration under this section for some or all future publications of the same series and the Council or the Minister (as the case may be) is of the opinion that a publication covered by the declaration—
  - (a) contains material that, if the publication were being classified separately, would cause it to be classified with a higher classification than the original issue; or

- (b) contains an advertisement that has been refused approval under this Act or the Commonwealth Act,

the Council or the Minister (as the case may be) must revoke the declaration so far as it affects that publication and any future publications of the same series.

- (3) If a declaration is revoked under this section in relation to a publication and to any future publications of the same series, the Council must also revoke approval of any advertisement for those publications that has been approved under this Act.

### **19B—Conditions of certain classifications for publications**

- (1) If the Council or the Minister classifies a publication Unrestricted, the Council or the Minister (as the case may be) may impose a condition that the publication not be sold, displayed for sale or delivered unless it is contained in a sealed package.
- (2) If the Council or the Minister classifies a publication Category 1 restricted, the Council or the Minister (as the case may be) may impose a condition that the publication not be sold, displayed for sale or delivered unless it is contained in a sealed package made of plain, opaque material.

### **20—Considered form of publication, film or computer game to be final**

- (1) The Council or the Minister must assume, in classifying a publication, film or computer game, that the publication, 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.

### **21—Consumer advice for publications, films and computer games**

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

### **21A—Additional content assessment**

- (1) The Council or the Minister may, for the purposes of—
- (a) the assessment of additional content associated with a film; or
- (b) the formulation or publication of consumer advice about additional content associated with a film,

take into account an assessment of the additional content prepared by an additional content assessor and furnished in the prescribed manner.

- (2) An assessment under subsection (1) must—
- (a) if the film includes 1 classified film—describe, and report on the impact of, any classifiable elements in the additional content that are at the same or higher level as the classified film; and
  - (b) if the film includes more than 1 classified film—describe, and report on the impact of, any classifiable elements in the additional content that are at the same or higher level as the classified film with the highest classification; and
  - (c) if the film does not include a classified film—describe, and report on the impact of, all classifiable elements in the additional content; and
  - (d) comply with any other requirement prescribed by the regulations.
- (3) However, an assessment of an additional content assessor will have no effect under this section—
- (a) in relation to a film that falls within a classification above R 18+; or
  - (b) in any other circumstance prescribed by the regulations.

## **22—Classification of films or computer games containing advertisement**

An unclassified film (the *first film*) or unclassified computer game (the *first game*) must not be classified if it contains an advertisement—

- (a) for a film or computer game with a higher classification than the classification the first film or first game would be given if it did not contain the advertisement; or
- (b) for an unclassified film or unclassified computer game—
  - (i) that has been assessed in accordance with this Act or the Commonwealth Act as being likely to have a higher classification than the classification the first film or first game would be given if it did not contain the advertisement; or
  - (ii) the likely classification of which has not been assessed (either under this Act or the Commonwealth Act); or
- (c) that has been refused approval (either under this Act or the Commonwealth Act).

## **23—Declassification of classified films or computer games**

- (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—
- (a) including or removing an advertisement, other than an advertisement to which section 22 applies; or
  - (b) for a classified film—the addition or removal of navigation functions; or
  - (c) for a classified film—the addition or removal of material which—
    - (i) provides a description or translation of the audio or visual content of the film; and

- (ii) would not be likely to cause the film to be given a higher classification; or
- (d) a modification of a kind referred to in section 21(3) of the Commonwealth Act.

### **23AA—Films consisting only of classified films**

Despite any other provision of this Act, a film—

- (a) that is contained in 1 device; and
- (b) that consists only of 2 or more classified films,

is to be treated, for the purposes of this Act, as if each of the classified films were on a separate device.

### **23A—Revocation of classification of films or computer games that are found to contain contentious material**

- (1) If the Council or the Minister is of the opinion that—
  - (a) a film or computer game that is classified under this Act contains contentious material (whether activated through use of a code or otherwise) that was not brought to the attention of the Council or the Minister (as the case may require) before the classification was made; and
  - (b) if the Council or the Minister (as the case may require) had been aware of the material before the classification was made, it would have given the film or computer game a different classification,the Council or the Minister (as the case may require) must revoke the classification.
- (2) If a classification is revoked under this section in relation to a film or computer game, the Council must also revoke approval of any advertisement for the film or computer game under this Act.

### **23AB—Revocation of classification of television series films**

- (1) If—
  - (a) the Council or the Minister has classified a film taking into account an assessment prepared by an authorised television series assessor under section 19AA; and
  - (b) the Council or the Minister (as the case may require) is satisfied that—
    - (i) the assessment was misleading, incorrect or grossly inadequate; and
    - (ii) if the Council or the Minister had been aware of the respects in which the assessment was misleading, incorrect or grossly inadequate before the classification was made, the Council or the Minister (as the case may be) would have given the film a different classification,the Council or the Minister (as the case may require) must revoke the classification.
- (2) The regulations may prescribe circumstances in which an assessment is misleading, incorrect or grossly inadequate for the purposes of subsection (1)(b).

- (3) To avoid doubt, the regulations are not to be taken to limit the circumstances in which an assessment is misleading, incorrect or grossly inadequate.

### **23B—Revocation of classification of films containing additional content**

- (1) If—
- (a) the Council or the Minister has classified a film taking into account an assessment prepared by an additional content assessor under section 21A; and
  - (b) the Council or the Minister (as the case may require) is satisfied that—
    - (i) the additional content contains any classifiable elements that—
      - (A) were not brought to the Council's or the Minister's attention in accordance with section 21A(2)(a), (b) or (c) before the classification was made; or
      - (B) were brought to the Council's or the Minister's attention in accordance with section 21A(2)(a), (b) or (c) before the classification was made but the assessment of the elements was misleading, incorrect or grossly inadequate; and
    - (ii) if the Council or the Minister had been aware of the relevant matters mentioned in subparagraph (i) before the classification was made, the Council or the Minister (as the case may be) would have given the film a different classification,
- the Council or the Minister (as the case may require) must revoke the classification.
- (2) The regulations may prescribe circumstances in which an assessment of classifiable elements is misleading, incorrect or grossly inadequate for the purposes of subsection (1)(b)(i)(B).
- (3) To avoid doubt, the regulations are not to be taken to limit the circumstances in which an assessment is misleading, incorrect or grossly inadequate.

### **24—Reclassification**

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.

### **24A—Calling in publications, films and computer games**

- (1) If a publication, film or computer game is being published in South Australia or the Council or the Minister has reasonable grounds to believe that it will be published in South Australia, the Council or the Minister (as the case may require) may, by notice in writing given to the publisher of the publication, film or computer game, require the publisher to submit to the Council or the Minister—
- (a) a copy of the publication, film or computer game; and
  - (b) in the case of a computer game any part of which is likely to be regarded as containing contentious material—
    - (i) particulars of that material and of the means by which access to it may be gained; or
    - (ii) a separate recording of that material,



for the purpose of classifying or reclassifying the publication, film or computer game or determining whether the publication, film or computer game should be classified or reclassified.

- (2) A notice given by the Council under subsection (1) must be signed by the Registrar or a Council member on behalf of the Council.
- (3) The Council or the Minister (as the case may require) must cause notice of a decision under subsection (1) to be published in the Gazette.
- (4) A person to whom a notice under this section is given must, within three business days after receiving the notice, comply with the notice.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (5) It is a defence to a prosecution for an offence against subsection (4) to prove that—
  - (a) the defendant did not intend—
    - (i) to publish the publication, film or computer game in South Australia; or
    - (ii) to cause, authorise, permit or license the publication, film or computer game to be published in South Australia; or
  - (b) in the case of a publication, film or computer game that was classified at the time at which the notice was given—the defendant did not have a copy of the publication, film or computer game.

### **Division 3—Approval of advertisements**

#### **25—Application of Division**

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

#### **26—Approval of advertisements**

- (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 appears to be, a child under 18 (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.

## **27—Calling in advertisements**

- (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.  
Expiation fee: \$315.
- (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.

## **Division 4—Assessments of likely classifications of unclassified films and unclassified computer games**

### **27A—Person may apply for assessment of likely classification of unclassified film or unclassified computer game**

- (1) A person who is, or proposes to be, the distributor, exhibitor or publisher of an unclassified film or an unclassified computer game may apply to the Council for an assessment of the likely classification of the film or computer game for the purpose of advertising the film or computer game.

- (2) The application must—
  - (a) be in writing; and
  - (b) be in a form approved in writing by the Council; and
  - (c) be signed by or on behalf of the applicant; and
  - (d) include any information, statements, explanations or other matters required by the form; and
  - (e) be accompanied by any other relevant material required by the form; and
  - (f) be accompanied by the prescribed fee.

### **27B—Council may assess likely classification of film or computer game**

- (1) This section applies if an application has been made under section 27A for the assessment of the likely classification of an unclassified film or an unclassified computer game.
- (2) The Council may assess the classification that, in the opinion of the Council, the film or computer game would be likely to have if the film or computer game were classified, having regard to the material and information available to the Council when making the assessment.
- (3) The Council may refuse to assess the likely classification of the film or computer game if the Council considers that the material and information available to the Council is insufficient (whether or not the Council has made a request under subsection (4)).
- (4) The Council may request that applicant to give to the Council, within the period specified in the request, further information for the purpose of enabling the Council to deal with the application.
- (5) The Council may decline to deal with the application, or decline to further deal with the application, until the information is given to the Council in accordance with the request.
- (6) To avoid doubt, this section does not require the Council to obtain further information under subsection (4) for the purposes of the Council's assessment.

### **27C—Revocation of assessment**

- (1) If, after making an assessment under section 27B of the likely classification of an unclassified film or an unclassified computer game, but before the film or computer game is classified, the Council is of the opinion that—
  - (a) the film or computer game contains, or will contain, material of which the Council was unaware when the Council made the assessment; and
  - (b) if the Council had been aware of the material before making the assessment, it would have assessed the film or computer game as likely to have a higher classification,

the Council must revoke the assessment, and must also revoke the approval of any approved advertisement for the film or game.

- (2) The Council must revoke an assessment under section 27B of the likely classification of a film or computer game, and must also revoke the approval of any approved advertisement for the film or game, if the applicant for the assessment makes a written request that the Council do so.
- (3) The revocation of an assessment or approved advertisement takes effect—
  - (a) when written notice of the decision to revoke is given to the applicant concerned; or
  - (b) if a later day is specified in the instrument of revocation—on that later day.

### **27D—Notice of decisions**

The Council must give written notice of a decision under section 27B or 27C to the applicant for the assessment or advertisement concerned as soon as practicable but not later than 30 days after the making of the decision.

## **Part 4—Films—exhibition, sale etc**

### **Division 1—Exhibition of films**

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

- (1) 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.

- (2) Subsection (1) is not contravened by the exhibition of a classified film—
  - (a) under a title different from that under which it is classified if it is contained on 1 device that consists only of 2 or more classified films; or
  - (b) with modifications referred to in section 23(2) of this Act or section 21(2) or (3) of the Commonwealth Act (as the case may be),or both.

#### **29—Display of notice about classifications**

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.

**30—Exhibition of RC and X 18+ films**

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 18+; or
- (b) a film classified RC or X 18+.

Maximum penalty: \$10 000.

**31—Prohibition of exhibition of R 18+ or MA 15+ films in certain places**

- (1) The Minister may prohibit the exhibition of a film classified R 18+ or MA 15+—
  - (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.

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

A person who—

- (a) is a parent or guardian of a minor; and
- (b) knows that a film classified RC, X 18+ or R 18+ or an unclassified film that would, if classified, be classified RC, X 18+ or R 18+ is to be exhibited in a public place,

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

Maximum penalty: \$2 500.

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

A minor who is 15 or older must not attend the exhibition in a public place of a film classified RC, X 18+ or R 18+, knowing that the film is so classified.

Maximum penalty: \$750.

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

- (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 18+; or
  - (b) a film classified RC or X 18+.

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 18+ 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.

### **35—Attendance of minor at R 18+ film—offence by exhibitor**

- (1) A person must not exhibit in a public place a film classified R 18+ 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.

### **36—Attendance of minor at MA 15+ film—offence by exhibitor**

- (1) A person must not exhibit in a public place a film classified MA 15+ 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**

### **37—Sale of films**

- (1) 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.

- (2) Subsection (1) is not contravened by the sale of a classified film—
  - (a) under a title different from that under which it is classified if it is contained on 1 device that consists only of 2 or more classified films; or
  - (b) with modifications referred to in section 23(2) of this Act or section 21(2) or (3) of the Commonwealth Act (as the case may be),

or both.

### **38—Sale of RC and X 18+ films**

A person must not sell—

- (a) an unclassified film that would, if classified, be classified RC or X 18+; or
- (b) a film classified RC or X 18+.

Maximum penalty: \$10 000.

### **39—Display of notice about classifications**

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.

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

- (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) a film is reclassified under this Act or the Commonwealth Act; or
  - (b) a classification or consumer advice for a film is revoked under this Act or the Commonwealth Act,

display of the determined markings and consumer advice applicable to the film before that reclassification or revocation is sufficient compliance with this section for a period of 30 days after the decision to reclassify or revoke takes effect.

#### **40A—Keeping R 18+ films with other films**

- (1) An occupier of premises (other than adult-only premises) at which films with a classification lower than R 18+ are sold must not display material for a film classified R 18+ at the premises—
- (a) unless—
    - (i) the material is displayed in a different area (including, for example, in a different aisle or on a different shelving case, stand or table) from that in which material for other films is displayed; and
    - (ii) the area is marked as an area displaying material for films classified R 18+ by a notice complying with subsection (2) displayed in a prominent place near the area; and
    - (iii) the surface area of the material that is on display (for example, the front cover of a DVD container where that is on display) is not more than 300 cm<sup>2</sup>; or
  - (b) unless, at all times while on display, the material bears no images or markings other than—
    - (i) the name of the film in letters of 10 millimetres or less in height; and
    - (ii) the determined markings relevant to its classification.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) A notice required to be displayed under subsection (1)(a) must contain the following statement (printed in legible type of at least 15 millimetres in height and of a colour that contrasts with the background colour of the notice):

**R 18+ FILMS AREA—THE PUBLIC ARE WARNED THAT MATERIAL  
DISPLAYED IN THIS AREA MAY CAUSE OFFENCE.**

- (3) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant—
- (a) did not know, and could not reasonably have known, that the material was on the premises; or
  - (b) took all reasonable steps to prevent the commission of the offence; or
  - (c) complied with a code of practice set out in the regulations for the purposes of this section.



- (4) In this section—

*material for a film* means—

- (a) a disc or other device on which the film is recorded; or
  - (b) a container, wrapping, casing or other item that bears images or markings representing the film.
- (5) Nothing in this section permits the exhibition of a film or part of a film classified R 18+ at premises to which this section applies.

#### **41—Keeping unclassified or RC or X 18+ films with other films**

- (1) If a person keeps or possesses an unclassified film or a film classified RC or X 18+ 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.

#### **42—Sale or delivery of certain films to minors**

- (1) A person must not sell or deliver to a minor—

- (a) an unclassified film that would, if classified, be classified RC or X 18+; or
- (b) a film classified RC or X 18+.

Maximum penalty: \$20 000.

- (2) A person must not sell or deliver to a minor a film classified R 18+ 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.

- (4) A minor who is 15 or older must not buy a film classified RC, X 18+ or R 18+, knowing that it is so classified.

Maximum penalty: \$750.

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

Maximum penalty: \$1 250.

- (6) 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**

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

- (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.

#### **44—Leaving films in certain places**

- (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 18+; or
  - (b) a film classified RC or X 18+,
- 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 18+ or MA 15+; or
  - (b) a film classified R 18+ or MA 15+,
- knowing that the film is, or would be, so classified.  
Maximum penalty: \$1 250.

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

- (1) A person must not possess or copy—
- (a) an unclassified film that would, if classified, be classified RC or X 18+; or
  - (b) a film classified RC or X 18+,
- 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****46—Sale of unclassified or RC publications**

- (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.

**47—Category 1 restricted publications**

- (1) A person must not sell or deliver a publication classified Category 1 restricted unless—
- (a) the publication—
    - (i) is contained in a sealed package made of opaque material; or
    - (ii) subject to any condition imposed by the National Board under the Commonwealth Act or by the Council or the Minister under this Act—is sold and delivered in a restricted publications area and is, at the time of being delivered, contained in a 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) a publication is reclassified under this Act or the Commonwealth Act; or
  - (b) a classification for a publication is revoked 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 or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

#### **48—Category 2 restricted publications**

- (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) a publication is reclassified under this Act or the Commonwealth Act; or
  - (b) a classification for a publication is revoked 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 or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

#### **48A—Sale or delivery of publications contrary to conditions**

If a publication is classified Unrestricted or Category 1 restricted subject to a condition imposed under this Act or the Commonwealth Act, a person must not sell or deliver the publication except in accordance with that condition.

Maximum penalty: \$5 000.

Expiation fee: \$315.

#### **48B—Consumer advice for publications**

A person must not sell a publication unless the relevant consumer advice, if any, is displayed on the publication or the packaging of the publication.

Maximum penalty: \$750.

Expiation fee: \$105.

#### **49—Publications classified unrestricted**

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

Maximum penalty: \$750.

Expiation fee: \$105.

#### **50—Misleading or deceptive markings**

- (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) a publication is reclassified under this Act or the Commonwealth Act; or  
(b) a classification for a publication is revoked 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 or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

#### **51—Sale of certain publications to minors**

- (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.

## **52—Leaving or displaying publications in certain places**

- (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.

## **53—Possession or copying of publication for the purpose of publishing**

- (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**

### **54—Sale or demonstration of computer game in public place**

- (1) 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.

- (2) Subsection (1) is not contravened by the sale or demonstration of a classified computer game with modifications referred to in section 21(2) or (3) of the Commonwealth Act.

### **55—Display of notice about classification**

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.

### **56—Demonstration etc of RC computer games**

- (1) A person must not—
  - (a) sell; or
  - (b) demonstrate in a public place or so that it can be seen from 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.

### **58—Demonstration etc of unclassified, R 18+ and MA 15+ computer games**

- (1) A person must not demonstrate a computer game classified R 18+ 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.

Maximum penalty: \$5 000.

- (1a) 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 R 18+;  
or

- (b) a computer game classified R 18+.

Maximum penalty: \$5 000.

- (1b) A minor who is 15 or older must not buy a computer game classified R 18+, knowing that it is so classified.

Maximum penalty: \$750.

- (1c) 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.

- (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.

### **59—Private demonstration of RC and R 18+ computer games in presence of minor**

- (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) A person must not demonstrate in a place, other than a public place, in the presence of a minor, a computer game classified R 18+ 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.

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

- (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) A person must not make a computer game available for playing on a pay and play basis (for example, a coin operated arcade game) unless the determined markings relevant to the classification of the computer game and relevant consumer advice, if any, are displayed on the device used for playing the game.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (5) If two or more computer games are available for playing on a device referred to in subsection (4), the determined markings and consumer advice to be displayed on the device are those relevant to the computer game with the highest classification under this Act or the Commonwealth Act.

- (6) If—

- (a) a computer game is reclassified under this Act or the Commonwealth Act; or
- (b) a classification or consumer advice for a computer game is revoked under this Act or the Commonwealth Act,

display of the determined markings and consumer advice applicable to the computer game before that reclassification or revocation is sufficient compliance with this section for a period of 30 days after the decision to reclassify or revoke takes effect.

#### **60A—Keeping R 18+ computer games with other computer games**

- (1) An occupier of premises (other than adult-only premises) at which computer games with a classification lower than R 18+ are sold must not display material for a computer game classified R 18+ at the premises—

- (a) unless—

- (i) the material is displayed in a different area (including, for example, in a different aisle or on a different shelving case, stand or table) from that in which material for other computer games is displayed; and
- (ii) the area is marked as an area displaying material for computer games classified R 18+ by a notice complying with subsection (2) displayed in a prominent place near the area; and
- (iii) the surface area of the material that is on display (for example, the cover of a casing containing the game, where that is on display) is not more than 300 cm<sup>2</sup>; or

- (b) unless, at all times while on display, the material bears no images or markings other than—

- (i) the name of the computer game in letters of 10 millimetres or less in height; and

- (ii) the determined markings relevant to its classification.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) A notice required to be displayed under subsection (1)(a) must contain the following statement (printed in legible type of at least 15 millimetres in height and of a colour that contrasts with the background colour of the notice):

R 18+ COMPUTER GAMES AREA—THE PUBLIC ARE WARNED THAT  
MATERIAL DISPLAYED IN THIS AREA MAY CAUSE OFFENCE.

- (3) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant—
- (a) did not know, and could not reasonably have known, that the material was on the premises; or
  - (b) took all reasonable steps to prevent the commission of the offence; or
  - (c) complied with a code of practice set out in the regulations for the purposes of this section.

- (4) In this section—

*material for a computer game* means—

- (a) a disc or other device on which the computer game is stored or recorded; or
- (b) a container, wrapping, casing or other item that bears images or markings representing the computer game.

- (5) Nothing in this section permits the exhibition of a computer game or part of a computer game classified R 18+ at premises to which this section applies.

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

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

### **62—Sale or delivery of certain computer games to minors**

- (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.

- (1a) A person must not sell or deliver to a minor a computer game classified R 18+ unless the person is a parent or guardian of the minor.  
Maximum penalty: \$5 000.
- (1b) It is a defence to a prosecution for an offence against subsection (1a) 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.
- (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.

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

- (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 R 18+ or 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.

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

- (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 R 18+ or MA 15+; or
  - (b) a computer game classified R 18+ or MA 15+,

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

Maximum penalty: \$1 250.

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

- (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**

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

- (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; or
  - (c) if the approval of the advertisement is revoked 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.

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

- (1) A person must not publish an advertisement for—
- (b) a film classified RC or X 18+; or
  - (c) a submittable publication; or
  - (d) a publication classified RC; or
  - (f) a computer game classified RC.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (1a) A person must not publish an advertisement for an unclassified film otherwise than in accordance with—
- (a) the advertising scheme; or
  - (b) a transitional Commonwealth regulation.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (1b) A person must not publish an advertisement for an unclassified computer game otherwise than in accordance with the advertising scheme.
- (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.
- (3) In this section—

*transitional Commonwealth regulation* means a regulation under Schedule 1 Item 13 of the *Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008* (Commonwealth).

### 68—Screening of advertisements with feature films

- (1) 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**

<b>Item</b>	<b>Column 1 Feature film</b>	<b>Column 2 Advertised film</b>
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA 15+	MA 15+, M, PG or G
5	R 18+	R 18+, MA, M, PG or G

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) A person must not screen an advertisement for an unclassified film in a public place unless the advertisement complies with the advertising scheme.

Maximum penalty: \$2 500.

Expiation fee: \$210.

### **69—Liability of occupier for certain advertisements**

- (1) An occupier of a public place must not screen in the public place an advertisement for a film classified R 18+ or MA 15+.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that—
- if the advertised film is classified MA 15+, the advertisement was screened during a program for the exhibition of a film classified R 18+ or MA 15+; or
  - if the advertised film is classified R18+, the advertisement was screened during a program for the exhibition of a film classified R 18+; or
  - the place in which the advertisement was screened was a restricted publications area.

### **69A—Liability of occupier for R 18+ advertisements in video stores etc**

- (1) An occupier of premises (other than adult-only premises) at which films or computer games with a classification lower than R 18+ are sold must not—

- exhibit for promotional purposes at the premises a film or computer game or part of a film or computer game classified R 18+; or
- display for promotional purposes at the premises a poster, pamphlet or other printed material in relation to a film or computer game classified R 18+.

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 took all reasonable steps to prevent the commission of the offence; or

- (b) the defendant complied with a code of practice prescribed by the regulations for the purposes of this section.
- (3) This section does not apply to—
- (a) material for a film, within the meaning of section 40A, that is lawfully displayed in accordance with that section; or
  - (b) material for a computer game, within the meaning of section 60A, that is lawfully displayed in accordance with that section.

## 70—Sale of feature films with advertisements

- (1) 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 15+	MA 15+, M, PG or G
5	R 18+	R 18+, MA 15+, M, PG or G

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) A person must not sell a classified film (the *feature film*) that is accompanied by an advertisement for an unclassified film unless the advertisement complies with the advertising scheme.

Maximum penalty: \$2 500.

Expiation fee: \$210.

## 71—Advertisements with computer games

- (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**

Item	Column 1 Main game	Column 2 Advertised computer game
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA 15+	MA 15+, M, PG or G

Item	Column 1 Main game	Column 2 Advertised computer game
5	R 18+	R 18+, MA 15+, M, PG or G

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) A person must not sell or demonstrate a classified computer game (the *main game*) in a public place that is accompanied by an advertisement for an unclassified computer game unless the advertisement complies with the advertising scheme.

Maximum penalty: \$2 500.

Expiation fee: \$210.

## 72—Advertisement to contain determined markings and consumer advice

- (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 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) a film, publication or computer game is reclassified under this Act or the Commonwealth Act; or
  - (b) a classification or consumer advice for a film, publication or computer game is revoked under this Act or the Commonwealth Act,

display of the determined markings and consumer advice applicable to the film, publication or computer game before that reclassification or revocation is sufficient compliance with subsection (1) for a period of 30 days after the decision to reclassify or revoke takes effect.

## 73—Misleading or deceptive advertisements

- (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) a film, publication or computer game is reclassified under this Act or the Commonwealth Act; or
  - (b) a classification for a film, publication or computer game is revoked under this Act or the Commonwealth Act,

publication of the determined markings applicable to the film, publication or computer game before that reclassification or revocation is sufficient compliance with subsection (2) for a period of 30 days after the decision to reclassify or revoke takes effect.

#### **74—Advertisements for Category 2 restricted publications**

- (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.

#### **75—Classification symbols etc to be published with advertisements**

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 7A—On-line services

### 75A—Interpretation

In this Part—

*access* has the same meaning as in the Commonwealth Broadcasting Act;

*Internet content* has the same meaning as in the Commonwealth Broadcasting Act;

*matter unsuitable for minors* means Internet content consisting of a film or computer game that is classified R 18+, or that would, if classified, be classified R 18+, or an advertisement for any such film or computer game consisting of or containing an extract or sample from the film or computer game comprising moving images;

*objectionable matter* means Internet content consisting of—

- (a) a film that is classified X 18+ or that would, if classified, be classified X 18+; or
- (b) a film or computer game that is classified RC or that would, if classified, be classified RC; or
- (c) an advertisement for a film or computer game referred to in paragraph (a) or (b); or
- (d) an advertisement that has been, or would be, refused approval under section 29(4) of the Commonwealth Act;

*on-line service* means an Internet carriage service within the meaning of the Commonwealth Broadcasting Act and includes a bulletin board.

### 75B—Application of Part

- (1) This Part applies to an on-line service other than an on-line service, or an on-line service of a class, prescribed by regulation.
- (2) Nothing in this Part makes it an offence to make available or supply objectionable matter or matter unsuitable for minors by means of an on-line service to a person, or class of persons, prescribed by regulation.
- (3) A person is not guilty of an offence under this Part by reason only of the person—
  - (a) owning, or having the control and management of the operation of, an on-line service; or
  - (b) facilitating access to or from an on-line service by means of transmission, down loading, intermediate storage, access software or similar capabilities.

### 75C—Making available or supplying objectionable matter on on-line service

A person must not, by means of an on-line service, make available, or supply, to another person, objectionable matter—

- (a) knowing that it is objectionable matter; or
- (b) being reckless as to whether or not it is objectionable matter.

Maximum penalty: \$10 000.

### **75D—Making available or supplying matter unsuitable for minors on on-line service**

- (1) A person must not, by means of an on-line service, make available or supply to another person any matter unsuitable for minors—
  - (a) knowing that it is matter unsuitable for minors; or
  - (b) being reckless as to whether or not it is matter unsuitable for minors.Maximum penalty: \$10 000.
- (2) It is a defence to a prosecution for an offence against this section to prove that—
  - (a) an approved restricted access system operated, at the time of the offence, in relation to access by means of the on-line service to the matter unsuitable for minors; or
  - (b) the defendant intended, and had taken reasonable steps to ensure, that such a system would so operate and any failure of the system to so operate did not result from any act or omission of the defendant.
- (3) In this section—

***approved restricted access system*** means—

  - (a) a restricted access system within the meaning of the Commonwealth Broadcasting Act; or
  - (b) any other system of limiting access declared by the Minister, by notice published in the Gazette, to be an approved restricted access system for the purposes of this definition.
- (4) A notice declaring a system of limiting access to be an approved restricted access system may be varied or revoked by the Minister by subsequent notice published in the Gazette.

### **75E—Recklessness**

- (1) A person is reckless as to whether matter is objectionable matter or matter unsuitable for minors if—
  - (a) the person is aware of a substantial risk that the matter is objectionable matter or matter unsuitable for minors; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2) The question of whether taking a risk is unjustifiable is one of fact.

## **Part 9—Miscellaneous**

### **80—Powers of entry, seizure and forfeiture**

- (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, 40A, 42(1), 44(1), 45, 46(1), 48(2), 51(1), 52(1), 53(1), 56, 59, 60A, 62(1), 64(1), 65 or 69A.

### **80A—Powers of authorised persons in Australian Public Service**

- (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.

### **80B—Forfeiture of other seized films, publications and computer games**

- (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 18+ 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.

### **80C—Classification of seized items at request of defendant**

- (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.

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

- (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.

### **82—Restricted publications area—offences**

- (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.

### **83—Evidence**

- (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, the Deputy of the National Director or the Convenor 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.

### **83A—Proof of classification by consent**

- (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 18+ 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—



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- (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.

### **83B—Proof of classification required**

- (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.

### **84—Protection for classified material against prosecutions under indecency etc laws**

- (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 18+ 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 18+;
  - (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.

### **85—Commencement of prosecution for offence**

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.

### **86—Proceedings against body corporate**

- (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) If a body corporate is guilty of a prescribed offence, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (5) In this section—

*prescribed offence* means an offence against section 34(1), 42(1), 51(1), 59 or 62(1).

### **87—Employees and agents**

- (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.

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

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 18+, R 18+ or MA 15+; or
- (b) a publication classified Category 1 restricted, Category 2 restricted or RC;
- (c) a submittable publication.

### **89—Service**

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.

### **90—Annual report**

- (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.

### **91—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) The regulations may—
  - (a) be of general application or vary in their application according to prescribed factors;

- (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the National Director.

## **Schedule 1—Call-in powers**

### **1—Calling in submittable publications for classification**

- (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.

### **1A—Calling in films for classification**

- (1) If—
  - (a) the National Director has reasonable grounds to believe that an unclassified film is not an exempt film; and
  - (b) the film 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 film, require the publisher to submit an application for classification of the film.
- (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 film in South Australia; or
  - (b) to cause, authorise, permit or license the film to be published in South Australia.

## 2—Calling in computer games for classification

- (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.

- (1a) If—
- (a) the National Director has reasonable grounds to believe that an unclassified computer game is not an exempt computer game; 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 computer game, require the publisher to submit an application for classification of the computer game.

- (2) The National Director must cause notice of a decision under subclause (1) or (1a) 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.

## 3—Calling in advertisements

- (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.

#### **4—Calling in a publication, film or computer game for reclassification**

- (1) If—

- (a) the National Board proposes to reclassify a publication, film or computer game under the Commonwealth Act; and
- (b) the publisher of the publication, film or computer game resides in South Australia or has an office in South Australia,

the National Director may, by notice in writing given to the publisher, require the publisher to submit a copy of the publication, film or computer game for the purpose of reclassifying it.

- (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 have a copy of the publication, film or computer game.

#### **5—Obtaining copies for review**

- (1) If—

- (a) an application is made for a review of a classification decision under the Commonwealth Act by a person who is not the original applicant for classification of the publication, film or computer game concerned; and

(b) the National Board or the National Review Board does not have a copy of the publication, film or computer game and a copy is not available to it; and

(c) the original applicant or the publisher of the publication, film or computer game resides in South Australia or has an office in South Australia,

the Convenor may, by notice in writing given to the original applicant or publisher, require the original applicant or publisher to make a copy of the publication, film or computer game available for the purpose of the review.

(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 have a copy of the publication, film or computer game.

## **Schedule 2—Repeals, transition and consequential amendments**

### **2—Transitional and saving provisions**

(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.



## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

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

*Classification of Films for Public Exhibition Act 1971*

*Classification of Publications Act 1974*

### Legislation amended by principal Act

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

*Classification of Theatrical Performances Act 1978*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	88	<i>Classification (Publications, Films and Computer Games) Act 1995</i>	7.12.1995	1.1.1996 ( <i>Gazette 21.12.1995 p1751</i> )
1996	67	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1996</i>	15.8.1996	s 7—17.10.1996 ( <i>Gazette 17.10.1996 p1361</i> )
2001	29	<i>Classification (Publications, Films and Computer Games) (Miscellaneous) Amendment Act 2001</i>	3.8.2001	4.11.2001 ( <i>Gazette 20.9.2001 p4212</i> )
2001	60	<i>Classification (Publications, Films and Computer Games) (Miscellaneous No. 2) Amendment Act 2001</i>	6.12.2001	22.3.2002 ( <i>Gazette 10.1.2002 p4</i> )
2002	30	<i>Classification (Publications, Films and Computer Games) (On-Line Services) Amendment Act 2002</i>	7.11.2002	1.12.2002 ( <i>Gazette 28.11.2002 p4292</i> )
2005	2	<i>Classification (Publications, Films and Computer Games) (Types of Classifications) Amendment Act 2005</i>	10.3.2005	26.5.2005 ( <i>Gazette 24.3.2005 p712</i> )

## Classification (Publications, Films and Computer Games) Act 1995—22.10.2015

### Legislative history

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2008	39	<i>Classification (Publications, Films and Computer Games) (Classification Process) Amendment Act 2008</i>	23.10.2008	1.7.2009 ( <i>Gazette</i> 7.5.2009 p1702)
2009	67	<i>Classification (Publications, Films and Computer Games) (R+ 18 Films) Amendment Act 2009</i>	10.12.2009	10.1.2010: s 2
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 32 (s 59)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
2011	2	<i>Classification (Publications, Films and Computer Games) (Exemptions and Approvals) Amendment Act 2011</i>	3.3.2011	3.6.2011: s 2
2012	41	<i>Classification (Publications, Films and Computer Games) (R+ 18 Computer Games) Amendment Act 2012</i>	22.11.2012	1.1.2013 ( <i>Gazette</i> 6.12.2012 p5432)
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 9 (s 13)—17.6.2013 ( <i>Gazette</i> 6.6.2013 p2498)
<b>2015</b>	<b>26</b>	<b><i>Classification (Publications, Films and Computer Games) (Miscellaneous) Amendment Act 2015</i></b>	<b>22.10.2015</b>	<b>22.10.2015: s 2</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 29/2001 s 18 (Sch)	4.11.2001
Pt 1		
s 2	<i>deleted by 29/2001 s 18 (Sch)</i>	<i>4.11.2001</i>
s 4		
additional content	inserted by 39/2008 s 4(1)	1.7.2009
additional content assessor	inserted by 39/2008 s 4(1)	1.7.2009
advertising scheme	inserted by 39/2008 s 4(2)	1.7.2009
adult-only premises	inserted by 67/2009 s 4	10.1.2010
approved form	substituted by 39/2008 s 4(3)	1.7.2009
authorised television series assessor	inserted by 39/2008 s 4(3)	1.7.2009
classifiable elements	inserted by 39/2008 s 4(4)	1.7.2009
Commonwealth Broadcasting Act	inserted by 29/2001 s 3	4.11.2001
consumer advice	amended by 60/2001 s 3(a), (b)	22.3.2002
Convenor	inserted by 39/2008 s 4(5)	1.7.2009
exempt computer game	inserted by 60/2001 s 3(c)	22.3.2002

exempt film	inserted by 60/2001 s 3(c)	22.3.2002
international flight	inserted by 60/2001 s 3(d)	22.3.2002
international voyage	inserted by 60/2001 s 3(d)	22.3.2002
National Review Board	inserted by 60/2001 s 3(e)	22.3.2002
place	amended by 60/2001 s 3(f)	22.3.2002
submittable publication	amended by 60/2001 s 3(g)	22.3.2002
television series film	inserted by 39/2008 s 4(6)	1.7.2009
s 6	amended by 29/2001 s 4	4.11.2001
	substituted by 60/2001 s 4	22.3.2002
	<b>amended by 26/2015 s 4</b>	<b>22.10.2015</b>
Pt 2		
s 11	<i>deleted by 84/2009 s 59</i>	<i>1.2.2010</i>
s 14		
s 14(1)	amended by 29/2001 s 5(a)—(c)	4.11.2001
	(d) deleted by 29/2001 s 5(d)	4.11.2001
	amended by 60/2001 s 5	22.3.2002
s 14(2)	amended by 29/2001 s 18 (Sch)	4.11.2001
Pt 3		
Pt 3 Div 1		
s 15		
s 15(1)	amended by 2/2005 s 4(1)	26.5.2005
s 15(2)	substituted by 2/2005 s 4(2)	26.5.2005
s 15(3)	substituted by 2/2005 s 4(2)	26.5.2005
	amended by 41/2012 s 4	1.1.2013
s 15(4)	inserted by 2/2005 s 4(2)	26.5.2005
Pt 3 Div 2		
s 19AA	inserted by 39/2008 s 5	1.7.2009
s 19A	inserted by 67/1996 s 7	17.10.1996
	substituted by 60/2001 s 6	22.3.2002
s 19B	inserted by 60/2001 s 6	22.3.2002
s 20		
s 20(1)	amended by 60/2001 s 7	22.3.2002
s 21		
s 21(1) and (2)	amended by 60/2001 s 8	22.3.2002
s 21A	inserted by 39/2008 s 6	1.7.2009
s 22	substituted by 39/2008 s 7	1.7.2009
s 23		
s 23(2)	substituted by 39/2008 s 8	1.7.2009
	<b>amended by 26/2015 s 5</b>	<b>22.10.2015</b>
s 23AA	inserted by 39/2008 s 9	1.7.2009
s 23A	inserted by 60/2001 s 9	22.3.2002

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ss 23AB and 23B	inserted by 39/2008 s 10	1.7.2009
s 24A	inserted by 60/2001 s 10	22.3.2002
Pt 3 Div 3		
s 26		
s 26(5)	amended by 39/2008 s 11	1.7.2009
s 27		
s 27(2)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 60/2001 s 11	22.3.2002
Pt 3 Div 4	inserted by 39/2008 s 12	1.7.2009
Pt 4		
s 28		
s 28(1)	s 28 amended by 29/2001 s 18 (Sch)	4.11.2001
	s 28 redesignated as s 28(1) by 39/2008 s 13	1.7.2009
s 28(2)	inserted by 39/2008 s 13	1.7.2009
	<b>amended by 26/2015 s 6</b>	<b>22.10.2015</b>
s 29	amended by 29/2001 s 18 (Sch)	4.11.2001
s 30	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 5	26.5.2005
s 31		
s 31(1)	amended by 2/2005 s 6	26.5.2005
s 31(3)	amended by 29/2001 s 18 (Sch)	4.11.2001
ss 32	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 7	26.5.2005
s 33	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 8	26.5.2005
s 34		
s 34(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 9(1)	26.5.2005
s 34(2)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 9(2)	26.5.2005
s 35		
s 35(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 10	26.5.2005
s 36		
s 36(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 11	26.5.2005
s 36(2)	amended by 29/2001 s 6	4.11.2001
s 37		
s 37(1)	s 37 amended by 29/2001 s 18 (Sch)	4.11.2001
	s 37 redesignated as s 37(1) by 39/2008 s 14	1.7.2009
s 37(2)	inserted by 39/2008 s 14	1.7.2009
	<b>amended by 26/2015 s 7</b>	<b>22.10.2015</b>
s 38	amended by 29/2001 s 18 (Sch)	4.11.2001

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	amended by 2/2005 s 12	26.5.2005
s 39	amended by 29/2001 s 18 (Sch)	4.11.2001
s 40		
s 40(1)—(3)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 40(4)	substituted by 60/2001 s 12	22.3.2002
s 40A	inserted by 67/2009 s 5	10.1.2010
s 40A(3)	amended by 41/2012 s 5	1.1.2013
s 41		
s 41(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 13	26.5.2005
s 42		
s 42(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 14(1)	26.5.2005
s 42(2)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 14(2)	26.5.2005
s 42(4)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 14(3)	26.5.2005
s 42(5)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 14(4)	26.5.2005
s 42(6)	editorial cross reference error corrected	
s 43		
s 43(3) and (5)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 44		
s 44(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 15(1)	26.5.2005
s 44(2)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 15(2)	26.5.2005
s 45		
s 45(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 16	26.5.2005
s 45(2)	amended by 29/2001 s 7	4.11.2001
Pt 5		
s 46		
s 46(1)	amended by 29/2001 ss 8(a), 18 (Sch)	4.11.2001
s 46(2)	amended by 29/2001 ss 8(b), 18 (Sch)	4.11.2001
s 46(2a)	inserted by 29/2001 s 8(c)	4.11.2001
s 47		
s 47(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 60/2001 s 13(a)	22.3.2002
s 47(2)	substituted by 60/2001 s 13(b)	22.3.2002
s 48		
s 48(1)	(c) and (d) deleted by 29/2001 s 9(a)	4.11.2001
s 48(2)	amended by 29/2001 ss 9(b), 18 (Sch)	4.11.2001

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s 48(2a) and (2b)	inserted by 29/2001 s 9(c)	4.11.2001
s 48(3)	amended by 29/2001 s 9(d)	4.11.2001
	substituted by 60/2001 s 14	22.3.2002
ss 48A and 48B	inserted by 60/2001 s 15	22.3.2002
s 49	amended by 29/2001 s 18 (Sch)	4.11.2001
s 50		
s 50(1) and (2)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 50(3)	substituted by 60/2001 s 16	22.3.2002
s 51		
s 51(1) and (2)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 52		
s 52(1) and (2)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 53		
s 53(1) and (2)	amended by 29/2001 s 18 (Sch)	4.11.2001
Pt 6		
s 54	amended by 29/2001 s 18 (Sch)	4.11.2001
<b>s 54(1)</b>	<b>s 54 redesignated as s 54(1) by 26/2015 s 8</b>	<b>22.10.2015</b>
<b>s 54(2)</b>	<b>inserted by 26/2015 s 8</b>	<b>22.10.2015</b>
s 55	amended by 29/2001 s 18 (Sch)	4.11.2001
s 56		
s 56(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 41/2012 s 6	1.1.2013
s 56(2)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 57	<i>amended by 29/2001 s 18 (Sch)</i>	<i>4.11.2001</i>
	<i>amended by 2/2005 s 17</i>	<i>26.5.2005</i>
	<i>deleted by 41/2012 s 7</i>	<i>1.1.2013</i>
s 58		
s 58(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	substituted by 41/2012 s 8	1.1.2013
s 58(1a)—(1c)	inserted by 41/2012 s 8	1.1.2013
s 58(2)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 18	26.5.2005
s 59		
s 59(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 59(2)	substituted by 41/2012 s 9	1.1.2013
s 59(3)	inserted by 41/2012 s 9	1.1.2013
s 60		
s 60(1)—(3)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 60(4)	substituted by 60/2001 s 17	22.3.2002
s 60(5) and (6)	inserted by 60/2001 s 17	22.3.2002
s 60A	inserted by 41/2012 s 10	1.1.2013
s 61		
s 61(1)	amended by 29/2001 s 18 (Sch)	4.11.2001

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s 62		
s 62(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 62(1a) and (1b)	inserted by 41/2012 s 11	1.1.2013
s 62(2)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 19	26.5.2005
s 63		
s 63(3)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 63(4)	amended by 2/2005 s 20	26.5.2005
	amended by 41/2012 s 12	1.1.2013
s 63(5)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 64		
s 64(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 64(2)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 21	26.5.2005
	amended by 41/2012 s 13	1.1.2013
s 65		
s 65(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 65(2)	amended by 29/2001 s 10	4.11.2001
Pt 7		
s 66		
s 66(1)	s 66 redesignated as s 66(1) by 29/2001 s 11(b)	4.11.2001
	(d) deleted by 29/2001 s 11(a)	4.11.2001
	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 60/2001 s 18	22.3.2002
s 66(2)	inserted by 29/2001 s 11(b)	4.11.2001
s 67		
s 67(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 22	26.5.2005
	(a) deleted by 39/2008 s 15(1)	1.7.2009
	(e) deleted by 39/2008 s 15(2)	1.7.2009
s 67(1a) and (1b)	inserted by 39/2008 s 15(3)	1.7.2009
s 67(3)	inserted by 39/2008 s 15(4)	1.7.2009
s 68		
s 68(1)	s 68 amended by 29/2001 s 18 (Sch)	4.11.2001
	s 68 amended by 2/2005 s 23	26.5.2005
	s 68 redesignated as s 68(1) by 39/2008 s 16	1.7.2009
s 68(2)	inserted by 39/2008 s 16	1.7.2009
s 69		
s 69(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 2/2005 s 24	26.5.2005
s 69(2)	amended by 2/2005 s 24	26.5.2005
s 69A	inserted by 67/2009 s 6	10.1.2010
s 69A(1)	amended by 41/2012 s 14(1), (2)	1.1.2013

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s 69A(2)	substituted by 41/2012 s 14(3)	1.1.2013
s 69A(3)	substituted by 41/2012 s 14(4)	1.1.2013
s 70		
s 70(1)	s 70 amended by 29/2001 s 18 (Sch)	4.11.2001
	s 70 amended by 2/2005 s 25	26.5.2005
	s 70 redesignated as s 70(1) by 39/2008 s 17	1.7.2009
s 70(2)	inserted by 39/2008 s 17	1.7.2009
s 71		
s 71(1)	s 71 amended by 29/2001 s 18 (Sch)	4.11.2001
	s 71 amended by 2/2005 s 26	26.5.2005
	s 71 redesignated as s 71(1) by 39/2008 s 18	1.7.2009
	amended by 41/2012 s 15	1.1.2013
s 71(2)	inserted by 39/2008 s 18	1.7.2009
s 72		
s 72(1)	amended by 29/2001 s 18 (Sch)	4.11.2001
	amended by 39/2008 s 19	1.7.2009
s 72(2)	substituted by 60/2001 s 19	22.3.2002
s 73		
s 73(1) and (2)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 73(3)	substituted by 60/2001 s 20	22.3.2002
s 74		
s 74(1) and (3)	amended by 29/2001 s 18 (Sch)	4.11.2001
s 75	amended by 29/2001 s 18 (Sch)	4.11.2001
Pt 7A	inserted by 30/2002 s 3	1.12.2002
s 75A		
matter unsuitable for minors	amended by 2/2005 s 27(1)	26.5.2005
	amended by 41/2012 s 16	1.1.2013
objectionable matter	amended by 2/2005 s 27(2)	26.5.2005
<i>Pt 8 before deletion by 26/2015</i>		
s 76		
s 76(1)	s 76 amended by 60/2001 s 21	22.3.2002
	s 76 amended and redesignated as s 76(1) by 2/2011 s 4(1), (2)	3.6.2011
s 76(2)	inserted by 2/2011 s 4(2)	3.6.2011
s 77		
s 77(1)	amended by 60/2001 s 22	22.3.2002
	amended by 39/2008 s 20(1), (2)	1.7.2009
	amended by 2/2011 s 5(1)	3.6.2011
s 77(2)	substituted by 2/2011 s 5(2)	3.6.2011
s 77(3)	inserted by 39/2008 s 20(3)	1.7.2009
	amended by 2/2011 s 5(1)	3.6.2011
s 77(4)	inserted by 39/2008 s 20(3)	1.7.2009



	<i>substituted by 2/2011 s 5(3)</i>	3.6.2011
s 78	<i>amended by 60/2001 s 23</i>	22.3.2002
	<i>amended by 2/2011 s 6</i>	3.6.2011
s 79		
s 79(1)	<i>amended by 60/2001 s 24(a)</i>	22.3.2002
	<i>amended by 39/2008 s 21</i>	1.7.2009
	<i>amended by 2/2011 s 7(1)</i>	3.6.2011
s 79(1a)	<i>inserted by 2/2011 s 7(2)</i>	3.6.2011
s 79(2)	<i>amended by 60/2001 s 24(b)</i>	22.3.2002
	<i>amended by 2/2011 s 7(3)</i>	3.6.2011
s 79(4)	<i>substituted by 60/2001 s 24(c)</i>	22.3.2002
	<i>substituted by 2/2011 s 7(4)</i>	3.6.2011
s 79(5)	<i>amended by 60/2001 s 24(d)</i>	22.3.2002
	<i>amended by 2/2011 s 7(3)</i>	3.6.2011
s 79A	<i>inserted by 39/2008 s 22</i>	1.7.2009
s 79A(1)	<i>amended by 2/2011 s 8(1)</i>	3.6.2011
s 79A(1a)	<i>inserted by 2/2011 s 8(2)</i>	3.6.2011
s 79A(2)	<i>amended by 2/2011 s 8(3)</i>	3.6.2011
s 79A(4)	<i>substituted by 2/2011 s 8(4)</i>	3.6.2011
s 79A(5)	<i>amended by 2/2011 s 8(3)</i>	3.6.2011
ss 79B and 79C	<i>inserted by 2/2011 s 9</i>	3.6.2011
<b>Pt 8</b>	<b><i>deleted by 26/2015 s 9</i></b>	<b>22.10.2015</b>
Pt 9		
s 80		
s 80(2)	<i>amended by 29/2001 s 12(a)</i>	4.11.2001
s 80(4)	<i>amended by 29/2001 s 12(b)</i>	4.11.2001
s 80(4a)	<i>inserted by 29/2001 s 12(c)</i>	4.11.2001
s 80(5)	<i>amended by 29/2001 s 18 (Sch)</i>	4.11.2001
s 80(7)	<i>inserted by 29/2001 s 12(d)</i>	4.11.2001
	<i>amended by 67/2009 s 7(1), (2)</i>	10.1.2010
	<i>amended by 41/2012 s 17</i>	1.1.2013
s 80A	<i>inserted by 29/2001 s 13</i>	4.11.2001
s 80B	<i>inserted by 29/2001 s 13</i>	4.11.2001
s 80B(7)	<i>amended by 2/2005 s 28</i>	26.5.2005
s 80C	<i>inserted by 29/2001 s 13</i>	4.11.2001
s 82		
s 82(1)	<i>amended by 29/2001 s 18 (Sch)</i>	4.11.2001
s 83		
s 83(1)	<i>amended by 29/2001 s 14(a), (b)</i>	4.11.2001
	<i>amended by 39/2008 s 23</i>	1.7.2009
s 83(2)	<i>amended by 29/2001 s 14(c), (d)</i>	4.11.2001
s 83A	<i>inserted by 29/2001 s 15</i>	4.11.2001
s 83A(2)	<i>amended by 2/2005 s 29</i>	26.5.2005

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s 83B	inserted by 29/2001 s 15	4.11.2001
s 84		
s 84(2) and (3)	amended by 2/2005 s 30	26.5.2005
s 85	substituted by 29/2001 s 16	4.11.2001
s 86		
s 86(4)	inserted by 29/2001 s 17	4.11.2001
	substituted by 16/2013 s 13	17.6.2013
s 86(5)	inserted by 16/2013 s 13	17.6.2013
s 88	amended by 2/2005 s 31	26.5.2005
s 91		
s 91(1)	s 91 redesignated as s 91(1) by 2/2011 s 10	3.6.2011
s 91(2)	inserted by 2/2011 s 10	3.6.2011
Sch 1		
heading	substituted by 39/2008 s 24(1)	1.7.2009
cl 1		
cl 1(3)	amended by 29/2001 s 18 (Sch)	4.11.2001
cl 1A	inserted by 60/2001 s 25(a)	22.3.2002
cl 2		
cl 2(1a)	inserted by 60/2001 s 25(b)	22.3.2002
cl 2(2)	amended by 60/2001 s 25(c)	22.3.2002
cl 2(3)	amended by 29/2001 s 18 (Sch)	4.11.2001
cl 3		
cl 3(2)	amended by 29/2001 s 18 (Sch)	4.11.2001
cl 4	inserted by 60/2001 s 25(d)	22.3.2002
cl 5	inserted by 60/2001 s 25(d)	22.3.2002
s 5(1)	amended by 39/2008 s 24(2)	1.7.2009
Sch 2		
cl 1	<i>deleted by 29/2001 s 18 (Sch)</i>	<i>4.11.2001</i>
cl 2		
cl 2(1)—(8), (10) and (11)	<i>deleted by 29/2001 s 18 (Sch)</i>	<i>4.11.2001</i>
cl 3	<i>deleted by 29/2001 s 18 (Sch)</i>	<i>4.11.2001</i>

## Transitional etc provisions associated with Act or amendments

### *Classification (Publications, Films and Computer Games) (Miscellaneous) Amendment Act 2001*

#### 19—Transitional provisions

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.

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***Classification (Publications, Films and Computer Games) (Miscellaneous No. 2) Amendment Act 2001*****26—Transitional provisions**

- (1) Subject to this section, an amendment to the principal Act effected by a provision of this Act only applies in relation to—
  - (a) a film, publication or computer game first published on or after the commencement of that provision; or
  - (b) a film, publication or computer game for which an application for classification is made on or after the commencement of that provision.
- (2) Section 24A of the principal Act, as inserted by section 10 of this Act, applies to a publication, film or computer game whether published before or after the commencement of section 10.
- (3) Section 27 of the principal Act, as amended by section 11 of this Act, applies to a publication, film or computer game whether published before or after the commencement of section 11.
- (4) Section 60(4) and (5) of the principal Act, as substituted by section 17 of this Act, apply to a computer game whether published before or after the commencement of section 17.
- (5) Clauses 4 and 5 of Schedule 1 of the principal Act, as inserted by section 25 of this Act, apply to a publication, film or computer game whether published before or after the commencement of section 25.

***Classification (Publications, Films and Computer Games) (Types of Classifications) Amendment Act 2005*****32—Application of Act**

- (1) The amendments made by this Act apply to the doing of things on or after the commencement of this Act.
- (2) The insertion of section 15(4) by this Act does not affect the interpretation of the *Classification (Publications, Films and Computer Games) Act 1995* as in force before the inclusion of that provision.

**33—Conversion of certain pre-commencement classifications to equivalent new classifications**

- (1) A film that, immediately before the commencement of this Act, had a classification of a type specified in column 2 of an item in the Table, is, for the purpose of applying the *Classification (Publications, Films and Computer Games) Act 1995* after that commencement, to be taken to have, and to have had at all times before that commencement when it had that classification, the classification of the type specified opposite it in column 3 of that item.

**Table****Film classifications**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Former type of classification</b>	<b>New type of classification</b>
1	MA	MA 15
2	R	R 18
3	X	X 18

- (2) A computer game that, immediately before the commencement of this Act, had a classification of a type specified in column 2 of an item in the Table, is, for the purpose of applying the *Classification (Publications, Films and Computer Games) Act 1995* after that commencement, to be taken to have, and to have had at all times before that commencement when it had that classification, the classification of the type specified opposite it in column 3 of that item.

**Table****Computer game classifications**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Former type of classification</b>	<b>New type of classification</b>
1	G (8)	PG
2	M (15)	M
3	MA (15)	MA 15

***Classification (Publications, Films and Computer Games) (Classification Process) Amendment Act 2008, Sch 1***

**1—Transitional provisions**

- (1) In this clause—  
*principal Act* means the *Classification (Publications, Films and Computer Games) Act 1995*.
- (2) Subsection (2) of section 23 of the principal Act, as enacted by this Act, applies to modifications made to classified films after the commencement of this subclause, whether the film was classified before or after the commencement of this subclause.
- (3) On or after the commencement of this subclause, section 23AA of the principal Act, as enacted by this Act, applies to films (*designated films*) that are contained on 1 device and consist only of 2 or more classified films—
- whether the designated films were created before or after the commencement of this subclause; and
  - whether the classified films were classified before or after the commencement of this subclause.

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***Classification (Publications, Films and Computer Games) (Miscellaneous)  
Amendment Act 2015, Sch 1—Transitional provisions***

**1—Exemptions**

- (1) A direction under section 76 of the *Classification (Publications, Films and Computer Games) Act 1995* (as in force immediately before the commencement of section 9 of this Act) that the Act does not apply to or in relation to a film, publication, computer game or advertisement continues according to its terms after the commencement of section 9 of this Act.
- (2) A direction under section 77 of the *Classification (Publications, Films and Computer Games) Act 1995* (as in force immediately before the commencement of section 9 of this Act) that the Act does not apply, or any of the provisions of that Act do not apply, to an organisation in relation to the exhibition of a film at an event continues according to its terms after the commencement of section 9 of this Act.
- (3) If an application, being an application made to the Minister or National Director under Part 8 of the *Classification (Publications, Films and Computer Games) Act 1995* before the commencement of section 9 of this Act, was not determined by the Minister or National Director before that commencement, then the application is taken not to have been made and any fee paid in respect of the application must be refunded to the person who made the application.

**Historical versions**

Reprint No 1—17.10.1996

Reprint No 2—4.11.2001

Reprint No 3—22.3.2002

Reprint No 4—1.12.2002

26.5.2005

1.7.2009

10.1.2010

1.2.2010

3.6.2011

1.1.2013

17.6.2013