

SOUTH AUSTRALIA

CLASSIFICATION OF PUBLICATIONS ACT, 1974

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 March 1984.

The Commissioner of Statute Revision is authorised by the Acts Republication Act, 1967, to make textual alterations of various kinds to an Act in preparing it for reprint. Some of the textual alterations are specifically footnoted, but others are not. Textual alterations of the following kinds are not footnoted:

- (a) the abbreviation of references to South Australian Acts by omitting reference to any year except the year of enactment and by omitting unnecessary qualifying phrases such as "as amended" and "as amended from time to time";*
- (b) the abbreviation of cross-references to other provisions of the same Act by omitting phrases such as "of this Act", "of this section" and "of this paragraph";*
- (c) the conversion of cross-references in the form "paragraph (a) of subsection (2) of section 7" to the form "section 7(2)(a)";*
- (d) the conversion of references to years or numbers, expressed in words, to arabic numerals;*
- (e) the conversion into decimal currency of references to pecuniary amounts;*
- (f) the correction of misprints and minor grammatical or clerical errors;*
- (g) the correction of the layout of provisions;*
- (h) the conversion of upper case letters to lower case letters or of lower case letters to upper case letters;*
- (i) the alteration of punctuation.*

A report has been prepared containing a comprehensive list of the textual alterations made under the Acts Republication Act, 1967, in the preparation of this reprint. The report will be laid before the House of Assembly and the Legislative Council and copies are available from the office of the Commissioner of Statute Revision, 11th Floor, S.G.I.C. Building, Victoria Square, Adelaide.

SUMMARY OF PROVISIONS**PART I****PRELIMINARY**

Section

1. Short title
2. Commencement
4. Interpretation
- 4a. Act does not prevent exhibition of films in accordance with Film Classification Act, 1971

PART II**THE BOARD AND THE REGISTRAR**

5. Establishment of Board
6. Terms and conditions of office
7. Quorum, etc.
8. Validity of acts of Board and immunity of its members
9. Allowances and expenses
10. The Registrar

PART III**CLASSIFICATION OF PUBLICATIONS**

11. Meetings of the Board
12. Criteria to be applied by the Board
13. Classification of publications
14. Conditions applying to restricted publications
15. Review
16. Powers of the Board
17. Notice

PART IV**MISCELLANEOUS**

18. Offences
- 18a. Person who has control or management of premises in which offence is committed to be also liable
- 18b. Liability to attach to certain officers of bodies corporate
19. Power to seize restricted publications
- 19a. Rights under contracts relating to unclassified or restricted publications
20. Certain actions not to constitute offences
- 20a. Annual report
21. Proceedings.
22. Regulations

CLASSIFICATION OF PUBLICATIONS ACT, 1974

being

Classification of Publications Act, 1974, No. 23 of 1974 [Assented to 11 April 1974]¹

as amended by

Classification of Publications Act Amendment Act, 1977, No. 41 of 1977 [Assented to 15 December 1977];
Classification of Publications Act Amendment Act, 1978, No. 91 of 1978 [Assented to 7 December 1978];
Classification of Publications Act Amendment Act, 1982, No. 69 of 1982 [Assented to 1 July 1982]²;
Classification of Publications Act Amendment Act, 1983, No. 112 of 1983 [Assented to 22 December 1983]³.

An Act to provide for the classification of publications; to amend the Police Offences Act, 1953; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART 1

PRELIMINARY

1. This Act may be cited as the "Classification of Publications Act, 1974". Short title.

2. This Act shall come into operation on a day to be fixed by proclamation⁴. Commencement.

* * * * *

4. In this Act, unless the contrary intention appears— Interpretation.

"adult" means a person of or above the age of eighteen years:

"the Board" means the Classification of Publications Board constituted under this Act:

"category 1 restricted publication" means a publication classified as a category 1 restricted publication by the Board in pursuance of this Act: Def. inserted by 69, 1982, s. 3 (a).

"category 2 restricted publication" means a publication classified as a category 2 restricted publication by the Board in pursuance of this Act: Def. inserted by 69, 1982, s. 3 (a).

"display", in relation to a publication, means display for the purposes of sale whether or not sale of the publication displayed: Def. inserted by 112, 1983, s. 3 (a).

¹ Came into operation 18 July 1974: *Gaz.* 11 July 1974, p. 99.

² Came into operation 1 October 1982: *Gaz.* 19 August 1982, p. 506.

³ Came into operation 22 December 1983: *Gaz.* 22 December 1983, p. 1719.

⁴ S. 3 omitted pursuant to the Acts Reproduction Act, 1967, s. 7 (2): see Summary of Provisions.

Def. inserted by
91, 1978, s. 2 (a).

“film” includes—

- (a) a slide;
- (b) a video tape;
- (c) any other form of optical or electronic record from which a visual image can be produced:

“legal practitioner” means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia:

“minor” means a person under the age of eighteen years:

Def. amended by
91, 1978, s. 2 (b);
112, 1983,
s. 3 (b).

“publication” means any book, paper, magazine, film or other written or pictorial matter that is available, or intended to be made available, for exhibition, display, sale or distribution to members of the public:

Def. amended by
69, 1982, s. 3 (b).

“restricted publication” means a publication classified as a category 1 or category 2 restricted publication by the Board in pursuance of this Act:

Def. inserted by
69, 1982, s. 3 (c).

“restricted publications area” means any premises, or part of any premises, established, constructed and managed in accordance with the regulations for the sale of restricted publications:

Def. amended by
112, 1983, s. 3 (c).

“sell” means—

- (a) sell by retail, barter, exchange or let on hire;
- or
- (b) agree or offer to sell by retail, barter, exchange or let on hire,

and “sale” has a corresponding meaning.

Act does not
prevent exhibition
of films in
accordance with
Film
Classification Act,
1971.
S. 4a inserted by
112, 1983, s. 4.

4a. Nothing in this Act prevents the exhibition of a film in accordance with the provisions of the Film Classification Act, 1971¹.

PART II

THE BOARD AND THE REGISTRAR

Establishment of
Board.

5. (1) There shall be a board entitled the “Classification of Publications Board”.

(2) The Board shall consist of six members, appointed by the Governor, of whom—

- (a) one shall be a legal practitioner;
- (b) one shall be a person skilled in the field of child psychology;
- (c) one shall be a person with wide experience in education;

and

- (d) the three remaining members shall be persons who possess, in the opinion of the Governor, other proper qualifications to participate in the deliberations and functions of the Board.

¹ “Film Classification Act, 1971” substituted for “Classification of Films for Public Exhibition Act, 1971” pursuant to the Acts Republication Act, 1967, s. 7 (1).

(3) The Governor may appoint one of the members of the Board to be chairman of the Board.

6. (1) Subject to this Act, a member of the Board shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment and, upon the expiration of his term of office, shall be eligible for reappointment. Terms and conditions of office.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Board and such a person, while acting in the absence of the member of whom he has been appointed a deputy, shall be deemed to be a member of the Board and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.

(3) The Governor may remove a member of the Board from office for—

- (a) mental or physical incapacity;
 - (b) neglect of duty;
 - (c) dishonourable conduct;
- or
- (d) any other cause considered sufficient by the Governor.

(4) The office of a member of the Board shall become vacant if—

- (a) he dies;
 - (b) his term of office expires;
 - (c) he resigns by written notice addressed to the Governor;
- or
- (d) he is removed from office by the Governor pursuant to subsection (3).

(5) Upon the office of a member of the Board becoming vacant, a person shall be appointed in accordance with this Act to the vacant office, but, where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, the person appointed in his place shall be appointed only for the balance of the term of his predecessor.

7. (1) Three members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting unless a quorum is present. Quorum, etc.

(2) A decision carried by a majority of the votes cast by the members present at a meeting of the Board shall be a decision of the Board.

(3) The chairman shall preside at a meeting of the Board, and, in addition to a deliberative vote, shall, in the event of an equality of votes, have a second or casting vote.

(4) In the absence of the chairman from a meeting of the Board, the members present shall elect one of their number to be chairman for that meeting, and a member so elected shall perform and discharge the functions and obligations of the chairman at that meeting.

(5) Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

Validity of acts of Board and immunity of its members.

8. (1) An act or proceeding of the Board shall not be invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability shall attach to a member of the Board for any act or omission by him, or by the Board, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties, under this Act.

Allowances and expenses.

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

The Registrar.

10. (1) There shall be a Registrar of the Board.

(2) The Registrar shall be appointed subject to and in accordance with the Public Service Act, 1967.

(3) The office of the Registrar may be held in conjunction with any other office in the public service of the State.

PART III

CLASSIFICATION OF PUBLICATIONS

Meetings of the Board.

11. (1) The Board may, of its own motion or at the request of any person, meet for the purpose of considering the classification to be assigned to a publication.

(2) The Board shall meet to consider the classification to be assigned to any publication referred by the Minister to the Board for its consideration.

Criteria to be applied by the Board.

12. (1) In considering questions as to whether a publication is offensive, or suitable or unsuitable for perusal by minors, the Board shall have regard to standards of morality, decency and propriety that are generally accepted by reasonable adult persons.

(2) In performing its functions under this Act, the Board shall give effect to the principles—

(a) that adult persons are entitled to read and view what they wish;

and

(b) that members of the community are entitled to protection (extending both to themselves and those in their care) from exposure to unsolicited material that they find offensive,

and, in a case where the application of those principles would lead to conflicting conclusions, shall exercise its powers in a manner that will, in the opinion of the Board, achieve a reasonable balance in the application of those principles.

(3) In performing its functions under this Act, the Board shall—

(aa) have due regard to the views of the Minister;

Para. (aa) inserted by 69, 1982, s. 4.

(a) have due regard to decisions, determinations or directions of authorities of the Commonwealth and of the States of the Commonwealth relevant to the performance of those functions;

and

(b) have due regard to the nature of the publication under consideration and to all other relevant factors that bear upon the classification or conditions that should be assigned to, or imposed in respect of, the publication.

13. (1) Where the Board decides that a publication—

Classification of publications.
Subsec. (1) amended by 69, 1982, s. 5 (b).

(a) describes, depicts, expresses or otherwise deals with prescribed matters in a manner that is likely to cause offence to reasonable adult persons;

Para. (a) amended by 69, 1982, s. 5 (a); 112, 1983, s. 5 (a).

or

(b) is unsuitable for perusal by minors,

the Board shall classify that publication as a category 1 or category 2 restricted publication.

(2) Where the Board decides that a publication is not likely to be offensive to reasonable adult persons and is not unsuitable for perusal by minors, it shall classify that publication as suitable for unrestricted distribution.

(3) The Board may refrain from assigning a classification to a publication where the Board is satisfied—

Subsec. (3) substituted by 69, 1982, s. 5 (c).

(a) that to assign a classification to the publication could not give proper effect to the principles that the Board is bound to apply;

or

(b) that the publication would, by reason of the manner in which it describes, depicts, expresses or otherwise deals with prescribed matters, so offend against the standards of morality, decency and propriety generally accepted by reasonable adult persons that it should not be assigned a classification.

Para. (b) amended by 112, 1983, s. 5 (b).

(3a) In this section—

Subsec. (3a) inserted by 112, 1983, s. 5 (c).

“prescribed matters” means—

(a) matters of sex;

(b) violence or cruelty;

(c) the manufacture, acquisition, supply or use of instruments of violence or cruelty;

(d) the manufacture, acquisition, supply, administration or use of drugs;

(e) instruction in crime;

or

(f) revolting or abhorrent phenomena.

(4) Where a publication under consideration by the Board consists of an issue or instalment of a series of publications that are issued periodically

or by instalment, the Board may classify future publications of the same series on the basis of the publication presently under consideration.

Conditions
applying to
restricted
publications.

S. 14 amended by
41, 1977, s. 2;
substituted by 69,
1982, s. 6.

14. (1) The following conditions are imposed in relation to every category 1 restricted publication:

- (a) a condition that the publication shall not be sold, delivered, exhibited or displayed to a minor (otherwise than by a parent or guardian, or a person acting with the authority of a parent or guardian, of the minor);

and

- (b) a condition that the publication shall not be exhibited or displayed in a place to which the public has access (not being a restricted publications area) unless the publication is contained in a sealed package.

(2) The following conditions are imposed in relation to every category 2 restricted publication:

- (a) a condition that the publication shall not be sold, delivered, exhibited or displayed to a minor (otherwise than¹ by a parent or guardian, or a person acting with the authority of a parent or guardian, of the minor);

- (b) a condition that the publication shall not be sold by retail, or exhibited, displayed or delivered for or on sale by retail, except in a restricted publications area;

- (c) a condition that the publication shall not be delivered to a person who has not made a direct request for the publication;

- (d) a condition that the publication shall not be delivered to a person unless wrapped in plain opaque material;

and

- (e) a condition that the publication shall not be advertised except in a restricted publications area or by way of printed or written material delivered to a person at the written request of that person.

Review.

Subsec. (1)
amended by 41,
1977, s. 3;
substituted by 69,
1982, s. 7 (a).

Subsec. (2)
amended by 69,
1982, s. 7 (b).

15. (1) The Board may, of its own motion, and shall, on the application of any person, review any classification assigned to a publication and, on the review, may revoke or vary the classification as it considers appropriate.

(2) Where an application is made under subsection (1) and the Board has within the preceding three months reviewed the classification assigned to, or imposed in respect of, the publication to which the application relates, the Board shall not be obliged to proceed with the review until the expiration of three months from that previous review.

Powers of the
Board.

16. (1) In the exercise of its functions under this Part, the Board may—

- (a) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the attendance before the Board of any person whom the Board thinks fit to call before it;

- (b) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the production of any publication or other document;

¹ The word "than" inserted pursuant to the Acts Republication Act, 1967, s. 7 (1).

- (c) inspect any publication or document produced before it and retain any such publication or document for such reasonable period as it thinks fit;
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Board relevant to any matter being inquired into by the Board (which oath or affirmation may be administered by any member of the Board or by the Registrar);

or

- (e) require any person appearing before the Board (whether he has been summoned to appear or not) to answer any relevant question put to him by any member of the Board or by any other person appearing before the Board.

(2) Subject to subsection (3), if any person—

- (a) who has been served with a summons to attend before the Board neglects or fails to attend in obedience to the summons;
- (b) who has been served with a summons to produce any publication or other document neglects or fails to comply with the summons;
- (c) misbehaves himself before the Board, wilfully insults the Board or any member thereof or interrupts the proceedings of the Board;

or

- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,

he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) A person shall not be obliged to answer a question put to him by the Board if the answer to that question would tend to incriminate him, or to produce any publication or other document if their contents would tend to incriminate him.

17. (1) Notice of—

- (a) any classification assigned to a publication;
 - (ab) the revocation or variation by the Board of any such classification;
- or
- (b) any decision by the Board to refrain from assigning a classification to a publication,

shall be published in the *Gazette*.

(2) Any such classification shall take effect from (and including) the day on which a notice is published in pursuance of subsection (1).

Notice.
Subsec. (1)
amended by 41,
1977, s. 4 (b).

Para. (a)
substituted by 69,
1982, s. 8 (a).

Para. (ab)
inserted by 41,
1977, s. 4 (a);
amended by 69,
1982, s. 8 (b).

Subsec. (2)
amended by 41,
1977, s. 4 (c); 69,
1982, s. 8 (c).

PART IV

MISCELLANEOUS

Offences.

Subsec. (1)
amended by 69,
1982, s. 9 (a).

18. (1) A person who sells, distributes, delivers, exhibits or otherwise deals with a restricted publication in contravention of any condition imposed under this Act shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars or imprisonment for three months.

Subsec. (2)
amended by 69,
1982, s. 9 (b).

(2) A person who publishes, or is concerned in the publication of, an advertisement contrary to conditions imposed under this Act shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars or imprisonment for three months.

Subsec. (3)
substituted by 69,
1982, s. 9 (c).

(3) No person shall sell, or exhibit, display or deliver for sale, any restricted publication unless the publication is marked in the prescribed manner with the prescribed information.

Penalty: Two thousand dollars.

Subsec. (4)
repealed by 69,
1982, s. 9 (c).

* * * * *

Subsec. (5)
inserted by 91,
1978, s. 3;
amended by 69,
1982, s. 9 (d), (e).

(5) No person shall exhibit images from a film that is a restricted publication—

(a) in any premises in which restricted publications are offered for sale;

or

(b) in any other premises associated or used in conjunction with any such premises.

Penalty: Five thousand dollars.

Subsec. (6)
inserted by 69,
1982, s. 9 (f).

(6) In proceedings for an offence against this section, an allegation in the complaint that a specified publication had been assigned a specified classification under this Act on a date specified in the complaint shall, in the absence of proof to the contrary, be accepted as proof of the matters so alleged.

Person who has
control or
management of
premises in which
offence is
committed to be
also liable.
S. 18a inserted by
91, 1978, s. 4.

18a. (1) Where an offence is committed under this Act in relation to a restricted publication, a person who has the control or management of the premises in which the offence was committed shall also be guilty of an offence and liable to the same penalty as that prescribed for the principal offence.

(2) It shall be a defence to a charge of an offence under subsection (1) for the defendant to prove that he could not, by the exercise of reasonable precautions, have prevented the commission of the principal offence.

Liability to attach
to certain officers
of bodies
corporate.
S. 18b inserted by
91, 1978, s. 4.

18b. (1) Where a body corporate is guilty of an offence under this Act—

(a) every director, or member of the governing body, of the body corporate;

and

(b) every manager or secretary of the body corporate,

shall be guilty of an offence and each liable to the same penalty as that prescribed for the principal offence.

(2) It shall be a defence to a charge of an offence under subsection (1) for the defendant to prove that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

19. (1) Where a member of the police force has reason to believe that an offence has been committed in relation to the exhibition, sale or distribution of a restricted publication, he may enter upon any premises of the person by whom he believes the contravention to have been committed and seize any copies of restricted publications upon those premises.

Power to seize restricted publications.

(2) A court before which a person is convicted of an offence against this Act may order that any restricted publications involved in the commission of the offence be forfeited to the Crown.

19a. (1) A person who is a party to a contract for the sale, delivery, exhibition or display of, or any other dealing with, a publication may, if the Board has—

Rights under contracts relating to unclassified or restricted publications. S. 19a inserted by 69, 1982, s. 10.

(a) refrained from assigning a classification to the publication under this Act;

or

(b) classified the publication as a restricted publication,

notify the other contracting party that he declines to be bound by the contract insofar as it relates to the publication in question and, if he has already received it, return the publication to the other party.

(2) Subsection (1) applies in relation to a contract whether or not the decision of the Board referred to in that subsection was made before or after the making of the contract.

(3) Where a person exercises a right conferred by subsection (1) in relation to a contract—

(a) he shall not incur any liability under or in respect of that or any other contract in consequence of that action;

and

(b) he may, if he has not received the publication or has returned the publication to the other contracting party in the condition in which it was supplied, recover from the other party, by action in any court of competent jurisdiction, any amount paid by him to the other party in connection with the supply of the publication.

20. (1) Notwithstanding any law relating to obscenity or indecency, it shall not be an offence—

Certain actions not to constitute offences.

(a) to print or produce a publication so that it may be submitted to the Board for classification;

(b) to sell, distribute, deliver, exhibit or display a publication that has been classified as suitable for unrestricted distribution;

or

(c) to sell, distribute, deliver, exhibit or display a publication in compliance with conditions imposed under this Act.

Para. (c) amended by 69, 1982, s. 11 (a).

(2) In any proceedings in respect of an offence relating to obscenity or indecency constituted by the sale, distribution, delivery, exhibition or display of a publication, it shall be a defence for the person charged with the offence to prove—

- (a) that the publication has been classified under this Act;
 - (b) that the circumstances alleged to constitute the offence took place before the date on which the classification came into force;
- and
- (c) that the defendant exercised restraints, or observed conditions, upon or in relation to the sale, distribution, delivery, exhibition or display of the publication that were not less stringent than the conditions (if any) imposed under this Act.

Para. (c) amended by 69, 1982, s. 11 (b).

Subsec. (3) inserted by 69, 1982, s. 11 (c).

(3) The provisions of this section do not derogate from the obligation to comply with the provisions of the Film Classification Act, 1971.

Annual report. S. 20a inserted by 41, 1977, s. 5.

20a. (1) The Board shall, as soon as practicable after the thirtieth day of June in each year, report to the Minister on its activities under this Act in respect of the period of twelve months immediately preceding that thirtieth day of June.

(2) Each report under subsection (1) shall, without limiting the generality of the matter to be included therein, include an assessment by the Board of the extent to which in its opinion it has applied and given effect to the criteria set out in section 12 (1).

(3) The Minister shall cause a copy of every report made under subsection (1) to be laid before each House of Parliament within fourteen days of his receipt thereof if Parliament is then in session or, if Parliament is not then in session, within fourteen days of the commencement of the next session of Parliament.

Proceedings. S. 21 substituted by 91, 1978, s. 5.

21. Proceedings in respect of an offence against this Act—

- (a) shall be disposed of summarily;
- and
- (b) may be commenced at any time within two years of the date on which the offence is alleged to have been committed.

Regulations.

22. (1) The Governor may make such regulations as are contemplated by this Act, or as he considers necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

Para. (a) amended by 69, 1982, s. 12 (a).

(a) provided for the manner in which and the information with which category 1 or category 2 restricted publications are to be marked;

Para. (ab) inserted by 69, 1982, s. 12 (b).

(ab) provide for the manner and form in which applications may be made for the classification of a publication, or for the review of the classification of a publication, and prescribe the fees payable upon such applications;

Para. (ac) inserted by 69, 1982, s. 12 (b).

(ac) regulate the establishment, construction and management of restricted publications areas and prevent the access of minors to such areas;

(ad) provide for the registration of restricted publications areas and the imposition of conditions upon, and the suspension and cancellation of, such registration; Para. (ad) inserted by 69, 1982, s. 12 (b).

(ae) provide for the manner and form in which applications may be made for the registration, or renewal of the registration, of restricted publications areas, and prescribe the fees payable upon such applications; Para. (ae) inserted by 69, 1982, s. 12 (b).

(b) provide for an exemption from all or any of the provisions of this Act (which may be unconditional or subject to such conditions as are stipulated in the regulations) in respect of the distribution, delivery, exhibition or other dealing with restricted publications by the authority or body administering any particular libraries, or libraries of a particular class;

and

(c) prescribe penalties (recoverable summarily) and not exceeding two thousand dollars for breach of, or non-compliance with, any regulation. Para. (c) amended by 69, 1982, s. 12 (c).

* * * * *

¹ S. 23 omitted pursuant to the Acts Republication Act, 1967, s. 4 (5), as the amendment effected by this section has been incorporated in the reprinted Police Offences Act, 1953.