

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 June 1995.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 March 1984.

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APPENDIX LEGISLATIVE HISTORY

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

Classification of Publications Act Amendment Act 1985 No. 1 of 1985 [Assented to 28 February 1985]⁴

Classification of Publications Act Amendment Act (No. 2) 1985 No. 29 of 1985 [Assented to 29 March 1985]⁵

Classification of Publications (Film Classification) Amendment Act 1993 No. 27 of 1993 [Assented to 30 April 1993]⁶

Classification of Publications (Display of Indecent Matter) Amendment Act 1993 No. 40 of 1993 [Assented to 20 May 1993]⁷

Classification of Publications (Arrangements with Commonwealth) Amendment Act 1993 No. 84 of 1993 [Assented to 27 October 1993]⁸

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 Came into operation (except portion of s. 9(a) inserting s. 18(3) and (3a)) 1 April 1985: *Gaz.* 29 March 1985, p. 969; remainder of Act came into operation 1 February 1986: *Gaz.* 16 January 1986, p. 88).

⁵ Came into operation 1 April 1985: s. 2.

⁶ Came into operation 1 May 1993: s. 2.

⁷ Came into operation 31 March 1994: *Gaz.* 3 February 1994, p. 205.

⁸ Came into operation 1 June 1995: *Gaz.* 1 June 1995, p. 2528.

NOTE:

· Asterisks indicate repeal or deletion of text.

· For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

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

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Classification of Publications Act 1974*.

Commencement

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

* * * * *

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"**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;

"**category 2 restricted publication**" means a publication classified as a category 2 restricted publication by the Board in pursuance of this Act;

"**display**", in relation to a publication, means display for the purposes of sale whether or not sale of the publication displayed;

"**film**" means—

- (a) a film; or
- (b) a video tape or video disc; or
- (c) any other form of recording,

from which moving pictures may be produced and includes a container, package or wrapping that is designed or used to hold a film and that includes written or pictorial matter relating to the film;

"**legal practitioner**" means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia;

"**'MA' film**" means a film classified as an "MA" film by the Board in pursuance of this Act;

"**minor**" means a person under the age of eighteen years;

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"**publication**" means any book, paper, magazine, film, slide 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;

"**restricted publication**" means—

- (a) a category 1 or a category 2 restricted publication; or
- (b) an "MA" film or an "R" film;

"**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;

"**'R' film**" means a film classified as an "R" film by the Board in pursuance of this Act;

"**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.

(2) In this Act—

- (a) a reference to exhibiting images from a film is a reference to exhibiting images from a film by means of an apparatus or device for the exhibition of moving pictures; and
- (b) a reference to exhibiting a film includes a reference to exhibiting images from the film.

(3) A film that was immediately before the commencement of this subsection classified as a category 1 restricted publication shall, unless a different classification is assigned to the film by the Board under this Act, be deemed to have been classified by the Board as an "R" film.

Act does not prevent exhibition of films in accordance with Film Classification Act 1971

4A. Nothing in this Act prevents the exhibition of a film in accordance with the provisions of the *Film Classification Act 1971*.

PART 2
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; and
 - (b) one shall be a person skilled in the field of child psychology; and
 - (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.
- (3) The Governor may appoint one of the members of the Board to be chairman of the Board.

Terms and conditions of office

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.

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

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(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.

Quorum, etc.

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.

(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 3
CLASSIFICATION OF PUBLICATIONS

Arrangements with Commonwealth with respect to classification

10A. (1) The Governor may arrange with the Governor-General of the Commonwealth for the exercise and discharge by officers or authorities of the Commonwealth, on behalf of the State, of the functions of the Board with respect to the classification of publications under this Act.

(2) An arrangement under this section does not prevent the Board from exercising the function itself and—

- (a) a classification assigned to a publication by the Board overrides any classification assigned pursuant to the arrangement; and
- (b) if the Board refrains from assigning a classification to a publication, any classification assigned pursuant to the arrangement is to be disregarded.

(3) An agreement relating to an arrangement under this section—

- (a) may be terminated by the Governor at any time;
- (b) has effect, subject to paragraph (a), according to its terms.

(4) The Minister must cause notice of the making or termination of an arrangement under this section, including the date of the making or termination of the arrangement, as the case may be, to be published in the *Gazette* as soon as practicable after that date.

(5) If an arrangement is in force under this section, the officer or authority of the Commonwealth carrying out the functions of the Board must not classify a publication at the request of a person unless a request is made (and the appropriate fee paid) for classification of the publication on behalf of each State and Territory of the Commonwealth in respect of which a corresponding arrangement is in force.

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 or viewing 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

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- (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; and
- (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.

Classification of publications

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

- (a) describes, depicts, expresses or otherwise deals with prescribed matters in a manner that is likely to cause offence to reasonable adult persons; or
- (b) is unsuitable for perusal or viewing by minors,

the Board shall, subject to subsection (3), classify the publication—

- (c) in the case of a publication other than a film—
 - (i) as a category 1 restricted publication; or
 - (ii) as a category 2 restricted publication; or
- (d) in the case of a film—as an "R" film.

(1a) Subject to this section, where the Board decides that a film depicts, expresses or otherwise deals with sex, violence or coarse language in such a manner as to make it unsuitable for viewing by persons under the age of 15 years, the Board must classify the film as an "MA" film.

(2) Where the Board decides that a publication is not likely to be offensive to reasonable adult persons and is not unsuitable for perusal or viewing by minors, the Board shall classify the publication—

- (a) in the case of a publication other than a film—as suitable for unrestricted distribution; or
- (b) in the case of a film—
 - (i) as a "G" film where the Board considers that the film is suitable for general viewing; or

- (ii) as a "PG" film where the Board considers that the film should only be viewed by a person under the age of fifteen years with the guidance of a parent or guardian of the person; or
- (iii) as an "M" film where the Board considers that the film cannot be recommended for viewing by persons under the age of fifteen years.

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

- (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; or
- (c) in the case of a film—that the film is, by reason of its emphasis on or explicit depiction of prescribed matters, unsuitable for classification as an "R" film.

(3a) In this section—

"prescribed matters" means—

- (a) matters of sex including demeaning images; or
- (b) violence or cruelty; or
- (c) the manufacture, acquisition, supply or use of instruments of violence or cruelty; or
- (d) the manufacture, acquisition, supply, administration or use of drugs; or
- (e) instruction in crime; or
- (f) revolting or abhorrent phenomena.

(3b) For the purposes of subsection (3)(c), a film—

- (a) that has been refused classification pursuant to an arrangement under section 10A; or
- (b) the classification of which has been revoked pursuant to an arrangement under section 10A; or
- (c) that has been classified under the law of another State or Territory of the Commonwealth otherwise than as a "G" film, "PG" film, "M" film, "MA" film or "R" film,

will be taken to be unsuitable for classification as an "R" film.

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(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.

Publications deemed to have been classified or to be unclassified in certain cases

14. * * * * *

(2) A publication, being a container, package or wrapping that is designed or used to hold a film and that includes written or pictorial matter relating to the film, shall be deemed to have been assigned the same classification by the Board as the classification (if any) assigned to the film under this Act.

(3) Subsection (2) does not apply to a publication if a different classification has been or is assigned to it by the Board under this Act.

(4) Where a publication that is classified under this Act is altered otherwise than in a manner authorised by regulations made for the purposes of this subsection, the altered publication shall, unless the same or some other classification is assigned to it, be deemed to be unclassified.

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Conditions applying to restricted publications

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

- (a) a condition that the publication shall not be sold or delivered to a minor (otherwise than by a parent or guardian, or a person acting with the written authority of a parent or guardian, of the minor);
- (b) a condition that the publication must not be displayed in a place to which the public has access (not being a restricted publications area) unless the publication is—
 - (i) contained in a sealed package and placed in a rack or other receptacle that prevents the display of any prescribed matter; or
 - (ii) contained in opaque material (being opaque material that does not depict any prescribed matter);
- (c) a condition that the publication must not be advertised in a manner that depicts any prescribed matter except—
 - (i) in a restricted publications area; or
 - (ii) in another category 1 restricted publication; or
 - (iii) in a category 2 restricted publication; or
 - (iv) by way of printed or written material delivered to a person at the written request of the person.

(2) The following conditions are imposed in relation to every "R" film:

- (a) a condition that the film shall not be sold or delivered to a minor (otherwise than by a parent or guardian, or a person acting with the written authority of a parent or guardian, of the minor);
- (b) a condition that images from the film shall not be exhibited 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).

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

- (a) a condition that the publication shall not be sold, displayed, delivered or exhibited to a minor (otherwise than by a parent or guardian of the minor);
- (b) a condition that the publication shall not be—
 - (i) sold, displayed or delivered on sale; or
 - (ii) exhibited in a place to which the public has access,unless the sale, display, delivery or exhibition takes place 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 or contained in plain opaque material;
- (e) a condition that the publication shall not be advertised except—
 - (i) in a restricted publications area; or
 - (ii) in another category 2 restricted publication; or
 - (iii) by way of printed or written material delivered to a person at the written request of the person.

(4) The following condition is imposed in relation to every "MA" film:

- a condition that the film must not be sold or delivered to a person under the age of 15 years (otherwise than by a parent or guardian, or a person acting with the written authority of a parent or guardian, of the person under the age of 15 years).

(5) In this section—

"prescribed matter" has the meaning assigned to the expression by section 13(3a).

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Review

15. (1) The Board may, of its own motion, and shall, on the application of any person, review any classification assigned to a publication (including a classification assigned to a publication by virtue of the operation of section 10A or 14(2)) 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; or
- (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; or
- (c) inspect any publication or document produced before it and retain any such publication or document for such reasonable period as it thinks fit; or
- (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; or
- (b) who has been served with a summons to produce any publication or other document neglects or fails to comply with the summons; or
- (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.

Notice

17. (1) Notice of—

- (a) any classification assigned to a publication (otherwise than by virtue of the operation of section 10A or 14(2)); or
- (ab) the revocation or variation by the Board of any 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 classification assigned to a publication (otherwise than by virtue of the operation of section 10A or 14(2)) or revocation of a classification shall take effect from (and including) the day on which a notice is published in pursuance of subsection (1).

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PART 4
MISCELLANEOUS

Offences

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.

(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.

(3) A person who sells, displays or delivers on sale a film that has not been classified under this Act shall be guilty of an offence and liable—

- (a) where the Board has subsequently classified the film under this Act and the defendant proves that he exercised restraints, or observed conditions, upon or in relation to the sale, display or delivery of the film that were not less stringent than the conditions (if any) imposed under this Act—to a penalty not exceeding two thousand dollars; or
- (b) where the Board has subsequently classified the film under this Act but the defendant fails to prove the matters referred to in paragraph (a)—to a penalty not exceeding five thousand dollars or imprisonment for three months; or
- (c) where the Board has subsequently decided to refrain from classifying the film under this Act—to a penalty not exceeding ten thousand dollars or imprisonment for six months.

(3a) A court convicting a person of an offence against subsection (3) that relates to a prescribed film may, in addition to imposing any other penalty in respect of the offence, order that the person shall not engage in the sale of films for a period not exceeding twelve months specified in the order and a person who fails to comply with such an order shall be guilty of an offence and liable to a penalty not exceeding ten thousand dollars or imprisonment for six months.

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(4) A person who sells, displays or delivers on sale a publication that has been classified under this Act shall, if the publication, or any package, container, wrapping or casing in which the publication is sold, displayed or delivered on sale, does not comply with the regulations relating to the marking of such publication, package, container, wrapping or casing, be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(4a) In subsection (4)—

"sell" or "sale" has the meaning assigned to the term by section 4 and includes sell or sale otherwise than by retail.

(4aa) A person who sells films shall ensure that signs of a prescribed kind containing the prescribed information relating to the classification of films under this Act are displayed in accordance with the regulations in any premises in which he sells or displays the films.

Penalty: Two thousand dollars.

- (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.

(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, or had not been assigned a classification under this Act, on a date specified in the complaint, or that the Board had on a specified date decided to refrain from classifying a publication specified in the complaint, shall, in the absence of proof to the contrary, be accepted as proof of the matters so alleged.

- (7) A person who—
- (a) exhibits images from a prescribed film to any other person; or
 - (b) by means of any process copies the whole or any part of a prescribed film;

shall be guilty of an offence and liable to a penalty not exceeding ten thousand dollars or imprisonment for six months.

- (8) In this section—

"prescribed film" means a film that has been refused classification under this Act or has had a classification that has been revoked under this Act.

(9) In proceedings for an offence against this section, an allegation in the complaint that a specified film was on a date specified in the complaint a prescribed film as defined by subsection (8) 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

18A. (1) Where an offence is committed under this Act in relation to a 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

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

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- (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.

Power to seize publications

19. (1) Where a member of the police force has reason to believe that an offence has been committed under this Act in relation to a 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 the publication upon those premises.

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

Rights under contracts relating to unclassified or restricted publications

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—

- (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.

Certain actions not to constitute offences

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

- (a) to print or produce a publication so that it may be submitted to the Board for classification; or
- (b) to sell, distribute, deliver, exhibit or display a publication that has been classified as suitable for unrestricted distribution or, being a film, as a "G" film, a "PG" film or an "M" film; or

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

(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; and
- (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.

(3) The provisions of this section do not derogate from the obligation to comply with the provisions of the *Classification of Films for Public Exhibition Act 1971*.

(4) In this section—

"sell" or "sale" has the meaning assigned to the term by section 4 and includes sell or sale otherwise than by retail.

Annual report

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

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.

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- (2) Without limiting the generality of subsection (1), those regulations may—
- (a) provide for or regulate the marking of publications of a particular class or the packages, containers, wrappings or casings for publications of a particular class; and
 - (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 (whether the classification or review is to be conducted by the Board or pursuant to an arrangement under section 10A); and
 - (ac) regulate the establishment, construction and management of restricted publications areas and prevent the access of minors to such areas; and
 - (ad) provide for the registration of restricted publications areas and the imposition of conditions upon, and the suspension and cancellation of, such registration; and
 - (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; and
 - (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 publications by specified persons or bodies, or persons or bodies of a specified class; and
 - (c) prescribe penalties (recoverable summarily) and not exceeding two thousand dollars for breach of, or non-compliance with, any regulation.

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APPENDIX

LEGISLATIVE HISTORY

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 2 of The Public General Acts of South Australia 1837-1975 at page 178.
- Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 March 1984. A schedule of these alterations was laid before Parliament on 3 April 1984.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Section 3:	deleted in pursuance of the Acts Republication Act 1967
Section 4:	redesignated as s. 4(1) by 1, 1985, s. 3(e) definition of "category 1 restricted publication" inserted by 69, 1982, s. 3(a) definition of "category 2 restricted publication" inserted by 69, 1982, s. 3(a) definition of "display" inserted by 112, 1983, s. 3(a) definition of "film" inserted by 91, 1978, s. 2(a); substituted by 1, 1985, s. 3(a) definition of "'MA' film" inserted by 27, 1993 s. 3(a) definition of "publication" amended by 91, 1978, s. 2(b); 112, 1983, s. 3(b); 1, 1985, s. 3(b) definition of "restricted publication" amended by 69, 1982, s. 3(b); substituted by 1, 1985, s. 3(c); amended by 27, 1993 s. 3(b) definition of "restricted publications area" inserted by 69, 1982, s. 3(c) definition of "'R' film" inserted by 1, 1985, s. 3(d) definition of "sell" amended by 112, 1983, s. 3(c)
Section 4(2) and (3):	inserted by 1, 1985, s. 3(e)
Section 4A:	inserted by 112, 1983, s. 4
Section 10A:	inserted by 84, 1993, s. 3
Section 12(1):	amended by 1, 1985, s. 4
Section 12(3):	amended by 69, 1982, s. 4
Section 13(1):	amended by 69, 1982, s. 5(a), (b); 112, 1983, s. 5(a); substituted by 1, 1985, s. 5(a)
Section 13(1a):	inserted by 27, 1993, s. 4(a)
Section 13(2):	substituted by 1, 1985, s. 5(a)
Section 13(3):	substituted by 69, 1982, s. 5(c); amended by 112, 1983, s. 5(b); 1, 1985, s. 5(b)
Section 13(3a):	inserted by 112, 1983, s. 5(c); amended by 40, 1993, s. 3
Section 13(3b):	inserted by 1, 1985, s. 5(c); amended by 27, 1993, s. 4(b); substituted by 84, 1993, s. 4(a)
Section 13(3c):	inserted by 1, 1985, s. 5(c); repealed by 84, 1993, s. 4(b)
Section 14:	amended by 41, 1977, s. 2; substituted by 69, 1982, s. 6; 1, 1985, s. 6
Section 14(1):	repealed by 84, 1993, s. 5(a)
Section 14(3):	amended by 84, 1993, s. 5(b)
Section 14(5):	repealed by 84, 1993, s. 5(c)
Section 14A:	inserted by 1, 1985, s. 6
Section 14A(1):	amended by 40, 1993, s. 4(a)
Section 14A(4):	inserted by 27, 1993, s. 5
Section 14A(5):	inserted by 40, 1993, s. 4(b)
Section 15(1):	amended by 41, 1977, s. 3; substituted by 69, 1982, s. 7(a); amended by 1, 1985, s. 7; 84, 1993, s. 6
Section 15(2):	amended by 69, 1982, s. 7(b)
Section 17(1):	amended by 41, 1977, s. 4(a), (b); 69, 1982, s. 8(a), (b); 1, 1985, s. 8(a), (b); 84, 1993, s. 7(a)
Section 17(2):	amended by 41, 1977, s. 4(c); 69, 1982, s. 8(c); 1, 1985, s. 8(c); 84, 1993, s. 7(b)
Section 18(1):	amended by 69, 1982, s. 9(a)
Section 18(2):	amended by 69, 1982, s. 9(b)
Section 18(3):	substituted by 69, 1982, s. 9(c); 1, 1985, s. 9(a)
Section 18(3a):	inserted by 1, 1985, s. 9(a)
Section 18(3b) and (3c):	inserted by 29, 1985, s. 3; repealed by 84, 1993, s. 8(a)
Section 18(3d):	inserted by 29, 1985, s. 3; amended by 27, 1993, s. 6; repealed by 84, 1993, s. 8(a)
Section 18(3e) and (3f):	inserted by 29, 1985, s. 3; repealed by 84, 1993, s. 8(a)
Section 18(4):	repealed by 69, 1982, s. 9(c); inserted by 1, 1985, s. 9(a)

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Section 18(4a) and (4aa):	inserted by 1, 1985, s. 9(a)
Section 18(5):	inserted by 91, 1978, s. 3; amended by 69, 1982, s. 9(d), (e)
Section 18(6):	inserted by 69, 1982, s. 9(f); amended by 1, 1985, s. 9(b)
Section 18(7):	inserted by 1, 1985, s. 9(c)
Section 18(8):	inserted by 1, 1985, s. 9(c); substituted by 84, 1993, s. 8(b)
Section 18(9):	inserted by 1, 1985, s. 9(c)
Section 18A:	inserted by 91, 1978, s. 4
Section 18A(1):	amended by 29, 1985, s. 4
Section 18B:	inserted by 91, 1978, s. 4
Section 19(1):	amended by 29, 1985, s. 5(a), (b)
Section 19(2):	amended by 29, 1985, s. 5(c)
Section 19A:	inserted by 69, 1982, s. 10
Section 20(1):	amended by 69, 1982, s. 11(a); 1, 1985, s. 10(a)
Section 20(2):	amended by 69, 1982, s. 11(b)
Section 20(3):	inserted by 69, 1982, s. 11(c); amended by 27, 1993, s. 7
Section 20(4):	inserted by 1, 1985, s. 10(b)
Section 20A:	inserted by 41, 1977, s. 5
Section 21:	substituted by 91, 1978, s. 5
Section 22(2):	amended by 69, 1982, s. 12; 1, 1985, s. 11; 84, 1993, s. 9
Section 23:	deleted as its function is now exhausted