



New South Wales

Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63

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New South Wales

Classification (Publications, Films and Computer Games) Enforcement ACT 1995 No 63

Act No 63, 1995

An Act to provide for the enforcement of a classification scheme for publications, films and computer games, to repeal the *Film and Computer Game Classification Act 1984* and the *Indecent Articles and Classified Publications Act 1975*, to consequentially amend the *Crimes Act 1900* and certain other Acts, and for other purposes. [Assented to 12 December 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Object of Act

The object of this Act is to give effect to the national scheme for the classification of publications, films and computer games set out in the Commonwealth Act by:

- (a) providing for the enforcement of classification decisions made under the Commonwealth Act, and
- (b) prohibiting the publishing (including the sale, exhibition, distribution and demonstration) of certain publications, films and computer games.

Note. Section 92 of the Commonwealth Act provides that the Commonwealth Act does not apply to broadcasting services to which the *Broadcasting Services Act 1992* of the Commonwealth applies. Accordingly, television and radio programs are not part of the classification scheme which this Act is enforcing for New South Wales purposes.

Note. Section 9 of the Commonwealth Act provides that publications, films and computer games are to be classified in accordance with the National Classification Code (as set out in the Schedule to that Act) and the classification guidelines (as determined under section 12 of that Act). The text of the Code is set out in the note appearing at the end of this Act.

4 Definitions

- (1) In this Act:

adult means a person who is 18 or older.

advertisement has the same meaning as in the Commonwealth Act. (*see note at the end of this section*)

approved form means a form approved by the Director and published in the Commonwealth Gazette.

Board means the Classification Board established by the Commonwealth Act.

business day means a day other than a Saturday, Sunday or public holiday.

buy means buy or exchange or hire and includes offer to buy or exchange or hire, agree to buy, exchange or hire or cause or permit to be bought or exchanged or hired, whether by retail or wholesale.

classified means classified under the Commonwealth Act.

Commonwealth Act means the Classification (*Publications, Films and Computer Games*) Act 1995 of the Commonwealth.

Commonwealth Gazette means the Commonwealth of Australia Gazette.

computer game has the same meaning as in the Commonwealth Act. (*see note at the end of this section*)

consumer advice means consumer advice determined under section 20 of the Commonwealth Act.

contentious material has the same meaning as in the Commonwealth Act. (*see note at the end of this section*)

demonstrate a computer game includes exhibit, display, screen, or make available for playing, the computer game.

Deputy Director means the Deputy Director of the Classification Board appointed under section 48 of the Commonwealth Act.

determined markings means markings determined under section 8 of the Commonwealth Act.

Director means the Director of the Classification Board appointed under section 48 of the Commonwealth Act.

exhibit a film (or an advertisement for a film) means project or screen the film or advertisement.

film has the same meaning as in the Commonwealth Act. (*see note at the end of this section*)

guardian means an adult who is exercising parental control over a minor.

minor means a person who is under 18.

place includes any premises, vehicle, vessel, aircraft or vacant land.

privately demonstrate a computer game means demonstrate the computer game in a place other than a public place.

privately exhibit a film means exhibit the film in a place other than a public place.

public place means any place which the public is entitled to use or which is open to, or used by the public, whether on payment of money or otherwise.

publication has the same meaning as in the Commonwealth Act. (*see note at the end of this section*)

publicly demonstrate a computer game means demonstrate the computer game:

- (a) in a public place, or
- (b) so that it can be seen from a public place.

publicly exhibit a film (or an advertisement for a film) means exhibit the film or advertisement:

- (a) in a public place, or
- (b) so that it can be seen from a public place.

publish has the same meaning as in the Commonwealth Act. (*see note at the end of this section*)

restricted publications area means any premises, or part of any premises, constructed and managed in accordance with the requirements set out in section 49.

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 Director under section 46 of this Act. (*see note at the end of this section*)

- (2) Notes in the text of this Act do not form part of this Act.

Note. Section 5 of the Commonwealth Act contains the following definitions:

advertisement for a publication, a film or a computer game means any form of advertising for the publication, film or game, and includes:

- (a) advertising, whether visual or audible, whether in the form of written or spoken words or other sounds and whether in a book, paper, magazine, poster, photograph, sketch, program, film or slide or in any other form, and
- (b) advertising on a container or wrapping enclosing the publication, film or game, and
- (c) advertising on an item of clothing advertising the publication, film or game.

computer game means a computer program and associated data capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows the playing of an interactive game, but does not include:

- (a) an advertisement for a publication, a film or a computer game, or
- (b) business, accounting, professional, scientific or educational computer software unless the software contains a computer game that would be likely to be classified MA (15+) or RC.

computer generated image means an image (including an image in the form of text) produced by use of a computer on a computer monitor, television screen, liquid crystal display or similar medium from electronically recorded data.

contentious material, in relation to a computer game, means material in the computer game that a reasonable adult would consider unsuitable for viewing or playing by a person under 15.

film includes a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image, including a computer generated image, can be produced, but does not include:

- (a) a computer game, or
- (b) an advertisement for a publication, a film or a computer game, or
- (c) a recording for business, accounting, professional, scientific or educational purposes unless it contains a visual image that would be likely to cause the recording to be classified MA, R, X or RC.

publication means any written or pictorial matter, but does not include:

- (a) a film, or
- (b) a computer game, or
- (c) an advertisement for a publication, a film or a computer game.

publish includes sell, offer for sale, let on hire, exhibit, display, distribute and demonstrate.

submittable publication means an unclassified publication that, having regard to the Code and the classification guidelines to the extent that they relate to publications, contains depictions or descriptions of sexual matters, drugs, nudity or violence that are likely to cause offence to a reasonable adult to the extent that the publication should not be sold as an unrestricted publication.

5 Matters constituting public exhibition of films and demonstration of computer games

- (1) For the purposes of this Act, a person is taken to publicly exhibit a film (or an advertisement for a film) if the person:
 - (a) arranges or conducts the exhibition of the film or advertisement in the public place, or
 - (b) has the superintendence or management of the public place in which the film or advertisement is exhibited.
- (2) For the purposes of this Act, a person is taken to publicly demonstrate a computer game if the person:
 - (a) arranges or conducts the demonstration of the computer game in the public place, or
 - (b) has the superintendence or management of the public place in which the computer game is demonstrated.

Part 2 Films

6 Sale or public exhibition of unclassified, RC or X films prohibited

A person must not sell or publicly exhibit:

- (a) a film classified RC or X, or
- (b) an unclassified film.

Maximum penalty:

- in the case of an unclassified film that is subsequently classified G— 1 penalty unit for an individual, 5 penalty units for a corporation
- in the case of an unclassified film that is subsequently classified PG— 5 penalty units for an individual, 10 penalty units for a corporation
- in the case of an unclassified film that is subsequently classified M— 10 penalty units for an individual, 20 penalty units for a corporation
- in the case of an unclassified film that is subsequently classified MA or R— 50 penalty units for an individual, 100 penalty units for a corporation
- in the case of a film classified RC or X or an unclassified film that is subsequently classified RC or X—100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.

Note. Penalties for offences are expressed in penalty units. Under the *Interpretation Act 1987*, the amount of a penalty unit was \$100 on the enactment of this Act.

7 Classified films not to be sold or exhibited under different title or in altered form

A person must not sell or publicly exhibit a classified film unless the film:

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

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

8 Display of notice about classifications

A person who sells or publicly exhibits a classified film must keep a notice in the approved form about classifications for films on public display in a prominent place in the place where the film is sold or exhibited.

Maximum penalty: 5 penalty units for an individual, 10 penalty units for a corporation.

9 Sale of certain films to minors prohibited

- (1) A person must not sell or deliver to a minor a film classified RC or X or an unclassified film that would, if classified, be classified RC or X.

Maximum penalty: 150 penalty units or imprisonment for 2 years for an individual, 300 penalty units for a corporation.

- (2) A person must not sell or deliver to a minor a film classified R, or an unclassified film that would, if classified, be classified R, unless the person is a parent or guardian of the minor.

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

- (3) It is a defence to a prosecution for an offence under subsection (2) to prove that:

- (a) the minor, before being sold or delivered the film, produced to the defendant (or the defendant's employee or agent) documentary evidence that might reasonably be accepted as applying to the minor and as showing that the minor was 18 or older, or
- (b) the defendant (or the defendant's employee or agent) believed on reasonable grounds that the minor was an adult, or
- (c) the minor was employed by the defendant and the delivery took place in the course of that employment.

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

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

- (5) It is a defence to a prosecution for an offence under subsection (4) to prove that:
- (a) the minor, before being sold the film, produced to the defendant (or the defendant's employee or agent) documentary evidence that might reasonably be accepted as applying to the minor and as showing that the minor was 15 or older, 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 parent or guardian of the minor had consented to the sale.

10 Parents not to permit minors to attend RC, X or R films

A person who is the parent or guardian of a minor must not permit the minor to attend the exhibition in a public place of a film classified RC, X or R or an unclassified film that would, if classified, be classified RC, X or R.

Maximum penalty: 20 penalty units.

11 Minors over 15 not to buy or attend RC, X or R films

A minor who is 15 or older must not:

- (a) buy a film classified RC, X or R or
- (b) attend the exhibition in a public place of a film classified RC, X or R,

knowing that the film is so classified.

Maximum penalty: 5 penalty units.

12 R films not to be publicly exhibited in presence of minors

- (1) A person must not publicly exhibit a film classified R if a minor is present during any part of the exhibition.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

- (2) It is a defence to a prosecution for an offence under this section to prove that:
- (a) the minor, before being admitted to the public place, produced to the defendant (or the defendant's employee or agent) documentary evidence that might reasonably be accepted as applying to the minor and as showing that the minor was 18 or older, or
 - (b) the defendant (or the defendant's employee or agent) believed on reasonable grounds that the minor was an adult, or
 - (c) the minor was employed by the defendant and the exhibition took place in the course of that employment.

13 MA films not to be publicly exhibited in presence of minors under 15

- (1) A person must not publicly exhibit a film classified MA if
- (a) a minor under 15 is present during any part of the exhibition, and
 - (b) the minor is not accompanied by his or her parent or guardian.

Maximum penalty: 10 penalty units for an individual, 20 penalty units for a corporation.

- (2) For the purposes of this section:
- (a) a minor does not cease to be accompanied by his or her parent or guardian merely because the parent or guardian is temporarily absent during any part of the exhibition, 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 under this section to prove that:
- (a) the minor, before being admitted to the public place, produced to the defendant (or the defendant's employee or agent) documentary evidence that might reasonably be accepted as applying to the minor and as showing that the minor was 15 or older, 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.

14 Private exhibition of RC, X or R films in presence of minors

- (1) A person must not privately exhibit in the presence of a minor a film classified RC or X or an unclassified film that would, if classified, be classified RC or X.

Maximum penalty: 100 penalty units.

- (2) A person must not privately exhibit in the presence of a minor a film classified R, or an unclassified film that would, if classified, be classified R, unless the person is a parent or guardian of the minor.

Maximum penalty: 50 penalty units.

- (3) It is a defence to a prosecution for an offence under this section to prove that the defendant believed on reasonable grounds that the minor was an adult.

15 Films to display 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 any consumer advice applicable to the film, are displayed on the container, wrapping or casing of the film.
- (2) A person must not sell an unclassified film if the container, wrapping or casing in which the film is sold displays a marking that indicates or suggests that the film has been classified.
- (3) A person must not sell a classified film if the container, wrapping or casing in which the film is sold displays a marking that indicates or suggests that the film is unclassified or has a different classification.

Maximum penalty (subsections (1)–(3)): 50 penalty units for an individual, 100 penalty units for a corporation.

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

16 Keeping unclassified, RC or X films with other films

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

Maximum penalty: 100 penalty units for an individual, 250 penalty units for a corporation.

- (2) It is a defence to a prosecution for an offence under this section to prove that the defendant did not know, and could not reasonably have known, that the film was on the premises.

17 Leaving RC or X films in certain places

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

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

Maximum penalty: 100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.

- (2) It is a defence to a prosecution for an offence under this section to prove that the defendant did not know, or could not reasonably be expected to have known, that the film is or would be classified RC or X.

18 Possession or copying of films for the purpose of sale or exhibition

- (1) A person must not possess:
- (a) a film classified RC or X, or
(b) an unclassified film that would, if classified, be classified RC or X,
- with the intention of selling or exhibiting the film.

- (2) A person must not copy:
- (a) a film classified RC or X, or
 - (b) an unclassified film that would, if classified, be classified RC or X,

with the intention of selling or exhibiting the film or the copy.

Maximum penalty (subsections (1) and (2)): 100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.

- (3) In proceedings for an offence under this section, evidence that a person made or possessed 10 or more copies of a film is prima facie evidence that the person intended to sell or exhibit the film.

Part 3 Publications

19 Sale of RC or submittable publications prohibited

- (1) A person must not sell or deliver:
- (a) a submittable publication, or
 - (b) a publication classified RC.

Maximum penalty:

- in the case of a submittable publication that is subsequently classified Category 1 restricted—20 penalty units for an individual, 50 penalty units for a corporation
- in the case of a submittable publication that is subsequently classified Category 2 restricted—50 penalty units for an individual, 100 penalty units for a corporation
- in the case of a publication classified RC (or a submittable publication that is subsequently classified RC)—100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.

- (2) It is a defence to a prosecution for an offence under subsection (1) (a) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.

20 Category 1 restricted publications

- (1) A person must not sell or deliver a publication classified Category 1 restricted unless it is contained in a sealed package and:
- (a) if the packaging is a transparent material, the publication displays the determined markings, or
 - (b) if the packaging is an opaque material, both the publication and the package display the determined markings.

Maximum penalty: 20 penalty units for an individual, 50 penalty units for a corporation.

- (2) If a publication is reclassified under Part 4 of the Commonwealth Act, it is sufficient compliance with subsection (1) for a period of 30 days after the decision to reclassify takes effect if the publication displays the determined markings applicable to the publication before reclassification.

21 Category 2 restricted publications

- (1) A publication classified Category 2 restricted must not be:
 - (a) displayed except in a restricted publications area, or
 - (b) delivered to a person who has not made a direct request for the publication, or
 - (c) delivered to a person unless it is contained in a package made of opaque material, or
 - (d) published unless it displays the determined markings.

- (2) A person must not sell, display, deliver or publish a publication classified Category 2 restricted in contravention of this section.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

- (3) If a publication is reclassified under Part 4 of the Commonwealth Act, it is sufficient compliance with subsection (1) (d) for a period of 30 days after the decision to reclassify takes effect if the publication displays the determined markings applicable to the publication before reclassification.

22 Publications classified Unrestricted

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

Maximum penalty: 5 penalty units for an individual, 10 penalty units for a corporation.

23 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.
- (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 (subsections (1) and (2)): 50 penalty units for an individual, 100 penalty units for a corporation.

- (3) If a publication is reclassified under Part 4 of the Commonwealth Act, it is sufficient compliance with this section for a period of 30 days after the decision to reclassify takes effect if the publication displays the determined markings applicable to the publication before reclassification.

24 Certain publications not to be sold or shown to minors

- (1) A person must not sell or deliver, or show, to a minor:

- (a) a submittable publication, or
- (b) a publication classified RC.

Maximum penalty: 150 penalty units or imprisonment for 2 years for an individual, 300 penalty units for a corporation.

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

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

- (3) It is a defence to a prosecution for an offence under subsection (1) (a) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.
- (4) It is a defence to a prosecution for an offence under subsection (2) to prove that:
- (a) the minor, before being sold or delivered the publication, produced to the defendant (or the defendant's employee or agent) documentary evidence that might reasonably be accepted as applying to the minor and as showing that the minor was 18 or older, or
 - (b) the defendant (or the defendant's employee or agent) believed on reasonable grounds that the minor was 18 or older.

25 Leaving publications in certain places

- (1) A person must not leave in a public place, 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, Category 2 restricted or RC.

Maximum penalty:

- in the case of a publication classified Category 1 restricted (or a submittable publication that is subsequently classified Category 1 restricted)—20 penalty units for an individual, 50 penalty units for a corporation
- in the case of a publication classified Category 2 restricted (or a submittable publication that is subsequently classified Category 2 restricted)—50 penalty units for an individual, 100 penalty units for a corporation
- in the case of a publication classified RC (or a submittable publication that is subsequently classified RC)—100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.

- (2) It is a defence to a prosecution for an offence under subsection (1) to prove that:
- (a) since the offence was alleged to have been committed the publication has been classified Unrestricted, or
 - (b) in the case of a publication classified Category 1 restricted, the public place was a shop or stall and the publication and packaging complied with section 20, or
 - (c) in the case of a publication classified Category 2 restricted, the defendant believed on reasonable grounds that the public place was a restricted publications area.
- (3) A person must not leave on private premises without the occupier's permission:
- (a) a submittable publication, or
 - (b) a publication classified Category 1 restricted, Category 2 restricted or RC.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

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

26 Possession or copying of publications for the purpose of sale

(1) A person must not possess or copy:

- (a) a submittable publication, or
- (b) a publication classified RC,

with the intention of selling the publication or the copy.

Maximum penalty: 100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.

- (2) It is a defence to a prosecution for an offence under subsection (1) (a) 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.
- (3) In proceedings for an offence under this section, evidence that a person made or possessed 10 or more copies of a publication is prima facie evidence that the person intended to sell the publication.

Part 4 Computer games

27 Sale or public demonstration of unclassified or RC computer games prohibited

A person must not sell or publicly demonstrate:

- (a) a computer game classified RC, or
- (b) an unclassified computer game.

Maximum penalty:

- in the case of an unclassified computer game that is subsequently classified G, G (8+) or M (15+)—10 penalty units for an individual, 20 penalty units for a corporation
- in the case of an unclassified computer game that is subsequently classified MA (15+)—20 penalty units for an individual, 50 penalty units for a corporation
- in the case of a computer game classified RC or an unclassified computer game that is subsequently classified RC—100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.

28 Classified computer games not to be sold or demonstrated under different title or in altered form

A person must not sell a classified computer game, or demonstrate a classified computer game in a public place, unless the computer game:

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

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

29 Display of notice about classifications

A person who sells or publicly demonstrates a computer game must keep a notice in the approved form about classifications for computer games on public display in a prominent place in the place where the computer game is sold or demonstrated.

Maximum penalty: 5 penalty units for an individual, 10 penalty units for a corporation.

30 Sale or delivery of RC or MA (15+) computer games to minors prohibited

- (1) A person must not sell or deliver to a minor a computer game classified RC or an unclassified computer game that would, if classified, be classified RC.

Maximum penalty: 150 penalty units or imprisonment for 2 years for an individual, 300 penalty units for a corporation.

- (2) A person must not sell or deliver to a minor under 15 a computer game classified MA (15+), or an unclassified computer game that would, if classified, be classified MA (15+), unless the person is a parent or guardian of the minor.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

- (3) It is a defence to a prosecution for an offence under subsection (2) to prove that:

- (a) the minor, before being sold or delivered the computer game, produced to the defendant (or the defendant's employee or agent) documentary evidence that might reasonably be accepted as applying to the minor and as showing that the minor was 15 or older, or
- (b) the defendant (or the defendant's employee or agent) believed on reasonable grounds that the minor was 15 or older.

31 Minors over 15 not to buy or attend demonstration of RC computer games

A minor who is 15 or older must not:

- (a) buy a computer game classified RC, or
- (b) attend the demonstration of a computer game classified RC in a public place,

knowing that the computer game is so classified.

Maximum penalty: 5 penalty units.

32 MA (15+) computer games not to be publicly demonstrated in presence of minors under 15

- (1) A person must not publicly demonstrate a computer game classified MA (15+) if:
- (a) a minor under 15 is present during any part of the demonstration, and
 - (b) the minor is not accompanied by his or her parent or guardian.

Maximum penalty: 10 penalty units for an individual, 20 penalty units for a corporation.

- (2) For the purposes of this section:
- (a) a minor does not cease to be accompanied by his or her parent or guardian merely because the parent or guardian is temporarily absent during the demonstration, and
 - (b) an offence is committed in respect of each unaccompanied minor present at the demonstration of the game.
- (3) It is a defence to a prosecution for an offence under subsection (1) to prove that:
- (a) the minor, before being admitted to the part of the public place in which the computer game was demonstrated, produced to the defendant (or the defendant's employee or agent) documentary evidence that might reasonably be accepted as applying to the minor and as showing that the minor was 15 or older, 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.

33 Private demonstration of RC computer games in presence of minors

- (1) A person must not privately demonstrate in the presence of a minor a computer game classified RC or an unclassified computer game that would, if classified, be classified RC.

Maximum penalty: 100 penalty units.

- (2) It is a defence to a prosecution for an offence under this section to prove that the defendant believed on reasonable grounds that the minor was an adult.

34 Computer games to display determined markings and consumer advice

- (1) A person must not publicly demonstrate a computer game classified MA (15+) unless the determined markings are exhibited before the computer game is demonstrated.

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

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

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

Maximum penalty (subsections (1)–(4)): 50 penalty units for an individual, 100 penalty units for a corporation.

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

35 Keeping unclassified or RC computer games with other computer games

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

Maximum penalty: 100 penalty units for an individual, 250 penalty units for a corporation.

- (2) It is a defence to a prosecution for an offence under this section to prove that the defendant did not know, and could not reasonably have known, that the computer game was on the premises.

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

Maximum penalty: 100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.

- (2) It is a defence to a prosecution for an offence under this section to prove that the defendant did not know, or could not reasonably be expected to have known, that the computer game is or would be classified RC.

37 Possession or copying of computer games for the purpose of sale or demonstration

- (1) A person must not possess:
- (a) a computer game classified RC, or
 - (b) an unclassified computer game that would, if classified, be classified RC,

with the intention of selling or demonstrating the computer game.

- (2) A person must not copy:
- (a) a computer game classified RC, or
 - (b) an unclassified computer game,

with the intention of selling or demonstrating the computer game or the copy.

Maximum penalty (subsections (1) and (2)): 100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.

- (3) In proceedings for an offence under this section, evidence that a person made or possessed 10 or more copies of an unclassified computer game is prima facie evidence that the person intended to sell or demonstrate the computer game.

Part 5 Advertisements

38 Publishing of advertisements—approvals under Commonwealth Act

- (1) A person must not publish an advertisement for a film, publication or computer game if the advertisement has been refused approval, or would be refused approval if submitted for approval, under section 29 of the Commonwealth Act.

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

- (2) If an advertisement for a film, publication or computer game is approved under section 29 of the Commonwealth Act, a person must not publish the advertisement:
- (a) in an altered form to the form in which it is approved, or
 - (b) if it is approved subject to conditions, except in accordance with those conditions.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

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

- (1) A person must not publish an advertisement for any one or more of the following:
- (a) a film classified RC or X,
 - (b) an unclassified film (other than a film that is the subject of a certificate of exemption under Division 2 of Part 3 of the Commonwealth Act),
 - (c) a submittable publication,
 - (d) a publication classified RC,
 - (e) an unclassified computer game,
 - (f) a computer game classified RC.

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

- (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 is taken to have published it.

40 Advertisements with feature films

- (1) A person must not publicly exhibit an advertisement for a classified film during a program for the exhibition of another classified film (*the feature film*) unless the advertised film has the same classification as (or has a lower classification than) the feature film.
- (2) A person must not sell a film that contains a classified film (the feature film) and an advertisement for another film unless the advertised film has the same classification as (or has a lower classification than) the feature film.

Maximum penalty (subsections (1) and (2)): 50 penalty units for an individual, 100 penalty units for a corporation.

- (3) The hierarchy of film classification is as follows:
- (a) G is a lower classification than PG, M, MA or R,
 - (b) PG is a lower classification than M, MA or R,
 - (c) M is a lower classification than MA or R,
 - (d) MA is a lower classification than R.

41 Advertisements with computer games

- (1) A person must not sell, or publicly demonstrate, a computer game that contains a classified computer game (the main computer game) and an advertisement for another computer game unless the advertised game has the same classification as (or has a lower classification than) the main computer game.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

- (2) The hierarchy of computer game classification is as follows:
- (a) G is a lower classification than G (8+), M (15+) or MA (15+),
 - (b) G (8+) is a lower classification than M (15+) or MA (15+),
 - (c) M (15+) is a lower classification than MA (15+).

42 Advertisements 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 computer game and relevant consumer advice (if any), and
 - (b) the determined markings and consumer advice are displayed:
 - (i) in the manner determined by the Director under section 8 of the Commonwealth Act, and
 - (ii) so as to be clearly visible, having regard to the size and nature of the advertisement.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

- (2) If a film, publication or computer game is reclassified under Part 4 of the Commonwealth Act, display of the determined markings and consumer advice applicable to the film, publication or computer game before reclassification is sufficient compliance with subsection (1) for a period of 30 days after the decision to reclassify takes effect.

43 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 computer game is classified.
- (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 computer game is unclassified or has a different classification.

Maximum penalty (subsections (1) and (2)): 50 penalty units for an individual, 100 penalty units for a corporation.
- (3) If a film, publication or computer game is reclassified under Part 4 of the Commonwealth Act, publication of the determined markings applicable to the film, publication or computer game before reclassification is sufficient compliance with subsection (2) for a period of 30 days after the decision to reclassify takes effect.

44 Advertisements for Category 1 and Category 2 restricted publications

- (1) A person must not publish an advertisement for a publication classified Category 1 restricted unless the advertisement is published:
 - (a) in a publication classified Category 1 restricted or Category 2 restricted, or
 - (b) in a restricted publications area.
- (2) A person must not publish an advertisement for a publication classified Category 2 restricted unless the advertisement is published:
 - (a) in a publication classified Category 2 restricted, or
 - (b) in a restricted publications area.
- (3) The occupier of a place (other than a restricted publications area) in which an advertisement for a publication classified Category 2 restricted is published is guilty of an offence.

Maximum penalty (subsections (1)–(3)): 100 penalty units for an individual, 200 penalty units for a corporation.

45 Classification symbols 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, publications or computer games, respectively.

Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.

Part 6 General regulatory and administrative provisions

Division 1 Calling in powers

46 Calling in submittable publications for classification

- (1) If:
- (a) the Director has reasonable grounds to believe that a publication is a submittable publication, and
 - (b) the publication is being published in New South Wales, or the Director has reasonable grounds to believe that it will be published in New South Wales,

the Director may, by notice in writing given to the publisher of the publication, require the publisher to submit an application under the Commonwealth Act for classification of the publication (or of subsequent issues of the publication).

- (2) A person to whom such a notice is given must comply with the notice within 3 business days after it is given.

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

- (3) The Director is required to publish in the Commonwealth Gazette a notice about the Director's decision under subsection (1) requiring the publisher to submit an application.
- (4) It is a defence to a prosecution for an offence under this section to prove that the defendant did not intend to publish the publication (or cause it to be published) in New South Wales.

47 Calling in computer games for classification

- (1) If
- (a) the Director has reasonable grounds to believe that a computer game contains or is likely to contain contentious material, and
 - (b) the computer game is being published in New South Wales, or the Director has reasonable grounds to believe that it will be published in New South Wales,

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

- (2) A person to whom such a notice is given must comply with the notice within 3 business days after it is given.

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

- (3) The Director is required to publish in the Commonwealth Gazette a notice about the Director's decision under subsection (1) requiring the publisher to submit an application.
- (4) It is a defence to a prosecution for an offence under this section to prove that the defendant did not intend to publish the computer game (or cause it to be published) in New South Wales.

48 Calling in advertisements

- (1) The Director may, by notice in writing given to:
- (a) the publisher of a publication that:
 - (i) the Director has reasonable grounds to believe is a submittable publication, and
 - (ii) is being published in New South Wales, or the Director has reasonable grounds to believe will be published in New South Wales, or
 - (b) the publisher of a classified film that is being published in New South Wales, or that the Director has reasonable grounds to believe will be published in New South Wales, or
 - (c) the publisher of a computer game that is being published in New South Wales, or that the Director has reasonable grounds to believe will be published in New South Wales,

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

- (2) A person to whom such a notice is given must comply with the notice within 3 business days after it is given.

Maximum penalty: 100 penalty units for an individual, 200 penalty units for a corporation.

- (3) It is a defence to a prosecution for an offence under this section to prove that the defendant did not intend to publish the publication, film or computer game (or cause it to be published) in New South Wales.

Division 2 Restricted publications areas

49 Requirements relating to construction and management

In order for any premises (or part of any premises) to be a restricted publications area, the following requirements must be complied with:

- (a) the premises must be so constructed that no part of the interior of the premises is visible to any person outside the premises,
- (b) each entrance to the premises must be fitted with a gate or door capable of excluding persons from the interior of the premises, and the premises must be kept closed by means of any such gate or door at all times while the premises are closed to the public,
- (c) the proprietor of the premises, or some other adult person appointed by the proprietor for that purpose, must remain on or near the premises, and must be in charge of the premises, at all times while the premises are open to the public,
- (d) at each entrance to the premises there must be prominently displayed, so as to be able to be read from outside the premises, a notice, printed in clearly legible letters at least 15 mm in height, containing the following words:

RESTRICTED PUBLICATIONS AREA—PERSONS UNDER 18 MAY NOT ENTER. MEMBERS OF THE PUBLIC ARE WARNED THAT SOME MATERIAL DISPLAYED IN THIS AREA MAY CAUSE OFFENCE.

50 Minors not permitted to enter restricted publications areas

- (1) The person in charge of a restricted publications area must not permit a minor to enter the area.

Maximum penalty: 50 penalty units for an individual, 180 penalty units for a corporation.

- (2) It is a defence to a prosecution for an offence under this section to prove that the defendant believed on reasonable grounds that the minor was an adult.

Division 3 Exemptions

51 Exemptions

- (1) The Director may:
- (a) on application by any person, make a written direction that this Act does not, to the extent and subject to any condition specified in the direction, apply to or in respect of any film, publication, computer game or advertisement, or
 - (b) on application made in accordance with subsection (6), make a written direction that this Act, or any specified provision of this Act, does not apply to an organisation approved under subsection (3) in relation to the exhibition of a film at an event (being a film and event specified in the direction).
- (2) In considering whether to make a direction under subsection (1), the Director is to give effect to any directions or guidelines issued by the Minister in relation to the application of this Act.
- (3) The Director, by notice published in the Commonwealth Gazette, may, on application, approve an organisation for the purposes of this section. An approval takes effect on the date of publication of the notice.
- (4) In considering whether to approve an organisation, the Director is to have regard to the following matters:
- (a) the purpose for which the organisation was formed,
 - (b) the extent to which the organisation carries on activities of a medical, scientific, educational, cultural or artistic nature,
 - (c) the reputation of the organisation in relation to the screening of films,
 - (d) the conditions as to admission of persons to the screening of films by the organisation.

The Director may revoke an approval if, because of a change in any such matter, the Director considers that it is no longer appropriate that the organisation be approved.

- (5) The Director is to notify an organisation in writing of the Director's decision:
- (a) to refuse an application for approval, or
 - (b) to revoke an approval,

within 30 days after the date of the decision and must give reasons for the decision. Revocation of an approval takes effect on the date of the decision to revoke or on a later date specified in the notice.

- (6) An application by an approved organisation for an exemption under subsection (1) (b) must:
- (a) be in writing, and
 - (b) specify the film that the organisation intends to exhibit and the event at which the film is to be exhibited, and
 - (c) be accompanied by a synopsis of the story or events depicted in the film, and the prescribed fee.
- (7) The Director must notify an organisation in writing of a decision to refuse an application for an exemption within 30 days after the date of the decision and must give reasons for the decision.

52 General exemption for law enforcement agencies and certain other persons

Nothing in this Act makes it an offence:

- (a) for a member or officer of a law enforcement agency (within the meaning of the Criminal Records Act 1991) to publish or deliver any film, publication or computer game in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law, or
- (b) for any person to publish or deliver any film, publication or computer game in the exercise or performance of a power, function or duty (as conferred or imposed on the person by or under any Act or law) relating to the classification of such material.

53 Exemptions for public libraries

- (1) In this section:

MA material means:

- (a) a film classified MA, and
- (b) a computer game classified MA (15+).

public library means the State Library of New South Wales or a local library within the meaning of the *Library Act 1939*.

restricted material means:

- (a) a film classified R, and
- (b) a publication classified Category 1 restricted or Category 2 restricted.

- (2) A public library, or any person employed in a public library, does not commit an offence under this Act in respect of any MA material or restricted material that is held in the library if the following requirements are complied with (whether by way of library rules or otherwise):

- (a) the display or perusal of MA material and restricted material, and access to such material by members of the public, must be restricted in an appropriate manner,
- (b) MA material and restricted material must not be screened or demonstrated in the library in the presence of members of the public,
- (c) minors must not be permitted to borrow restricted material,
- (d) minors under 15 must not be permitted to borrow MA material without parental or guardian consent.

- (3) In order to comply with subsection (2) (c), it is sufficient that:

- (a) the person borrowing the restricted material from the library (the **borrower**) produced to the person responsible for lending the material documentary evidence that might reasonably be accepted as applying to the borrower and as showing that the borrower was 18 or older, or
- (b) the person responsible for lending the material believed on reasonable grounds that the borrower was 18 or older.

- (4) In order to comply with subsection (2) (d), it is sufficient that:
- (a) the person borrowing the MA material from the library (the *borrower*) produced to the person responsible for lending the material documentary evidence that might reasonably be accepted as applying to the borrower and as showing that the borrower was 15 or older, or
 - (b) the person responsible for lending the material believed on reasonable grounds that the borrower was 15 or older (or that parental or guardian consent has been given).

Division 4 Miscellaneous

54 Power to demand particulars

- (1) A person who:
- (a) exhibits, sells or delivers a film to another person (or is about to exhibit, sell or deliver a film to another person), or
 - (b) demonstrates, sells or delivers a computer game to another person (or is about to demonstrate, sell or deliver a computer game to another person),

may, if the person has reasonable cause to suspect that the exhibition, demonstration, sale or delivery to the other person is, or would be, in contravention of this Act, demand the name, age and address of the other person.

- (2) A police officer who has reasonable cause to suspect that the exhibition, sale or delivery of a film, or the demonstration, sale or delivery of a computer game, to a person is, or would be, in contravention of this Act, may demand the name, age and address of the person.
- (3) A person must not give false particulars or fail or refuse to give satisfactory particulars demanded under this section.

Maximum penalty: 1 penalty unit.

Part 7 Procedure

55 Search warrants

- (1) A police officer may apply to an authorised justice for a search warrant if the officer has reasonable grounds for believing:
 - (a) that an offence under this Act has been or is about to be committed in or on any premises, and
 - (b) that there is in or on any premises any thing connected with the offence.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any police officer named in the warrant
 - (a) to enter the premises, and
 - (b) to search the premises for, and to seize, any thing that the officer reasonably believes is connected with the offence, and
 - (c) on the premises or elsewhere, to screen by means of any suitable equipment (whether or not found in or on the premises) any film found in or on the premises, and
 - (d) on the premises or elsewhere, to demonstrate by means of any suitable equipment (whether or not found in or on the premises) any computer game found in or on the premises.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) For the purposes of this Part, a thing is connected with a particular offence if it is:
 - (a) a thing with respect to which the offence has been committed, or
 - (b) a thing that will afford evidence of the commission of the offence, or
 - (c) a thing that was used, or was intended to be used, for the purpose of committing the offence.
- (5) In this section, ***authorised justice*** has the same meaning as in the *Search Warrants Act 1985*.

56 Forfeiture following seizure

- (1) A thing that has been seized pursuant to a search warrant issued under section 55 must be returned to the premises in or on which it was seized unless, not later than 90 days after the seizure:
 - (a) proceedings are brought against a person for an offence under this Act in connection with the thing, or
 - (b) a police officer reports the seizure to a Magistrate.
- (2) If such a report is made, the Magistrate is to issue a summons calling on the person who, at the time of the seizure of the thing, was occupying or using the premises entered under the authority of the search warrant to appear before a Local Court to show cause why the thing or other things seized should not be forfeited to the Crown.
- (3) If the person summoned (or some other person) claims any of the things to which the summons relates, the person must, in order for the thing to be returned to the person, satisfy the Local Court that the thing is not in any way connected with an offence under this Act.
- (4) The Local Court before which the summons is returned may order that there be forfeited to the Crown:
 - (a) such of the things to which the summons relates as are not claimed by the person summoned or by some other person, or
 - (b) such of the things as, in the opinion of the Court, should be so forfeited.
- (5) A Local Court is to order the return of a thing seized pursuant to a search warrant issued under section 55:
 - (a) if the Court dismisses the proceedings for an offence under this Act with respect to the thing, or
 - (b) if, on the return before it of a summons issued under this section with respect to the thing, it does not form the opinion referred to in subsection (4) (b).

57 Summary procedure for offences

- (1) Proceedings for an offence under this Act may be dealt with summarily:
 - (a) before a Local Court constituted by a Magistrate sitting alone, or
 - (b) before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in a Local Court, the maximum penalty that the Local Court may impose for the offence is, despite any other provision of this Act, 100 penalty units or imprisonment for 2 years or the maximum penalty provided by this Act in respect of the offence (whichever is less).

58 Evidence

In any proceedings for an offence under this Act, a certificate issued under section 87 of the Commonwealth Act signed (or purporting to be signed) by the Director or Deputy Director and stating that:

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

is admissible and is prima facie evidence of the matters stated in the certificate.

59 Commencement of proceedings

- (1) Proceedings for an offence under this Act in relation to a film, publication or computer game that is unclassified at the time of the alleged offence:
 - (a) are not to be commenced until the film, publication or computer game has been classified, and
 - (b) are not to be commenced later than 12 months after the date on which the film, publication or computer game was classified.

- (2) Proceedings for an offence under this Act in relation to a film, publication or computer game that is classified at the time of the alleged offence are not to be commenced later than 12 months after the date of the alleged offence.

60 Costs

If a person is convicted of an offence under this Act, the court may order the person to pay by way of costs, in addition to any other costs that the court may order, the amount of any fee incurred by the prosecution for the classification of the material concerned and for the provision of a certificate under section 87 of the Commonwealth Act.

61 Forfeiture of films, publications and computer games on conviction

If a person is convicted of an offence under this Act, the court may order:

- (a) that there is to be forfeited to the Crown any films, publications or computer games (and any other equipment or material) in respect of which the offence was committed, and
- (b) that any such forfeited material is to be destroyed or otherwise disposed of as the court thinks fit.

62 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person satisfies the court that:
- (a) the corporation contravened the provision without the person's knowledge, or
 - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act.

63 Certain proceedings precluded

Proceedings are not to be brought against any person for publishing an obscene libel or an indecent article:

- (a) for the purposes of an application for classification under the Commonwealth Act, or
- (b) if the libel or article is, or is part of, a film, publication or computer game that is classified (other than RC or X).

Part 8 Miscellaneous

64 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

65 Savings and transitional provisions

Schedule 1 has effect.

66 Amendment of Crimes Act 1900

The *Crimes Act 1900* is amended as set out in Schedule 2.

67 Consequential amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule.

68 Repeals

The following Acts (including the regulations made under them) are repealed:

- *Film and Computer Game Classification Act 1984*
- *Indecent Articles and Classified Publications Act 1975.*

Schedule 1 Savings and transitional provisions

(Section 65)

Part 1 Preliminary

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to this Act or a later day.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Films

- (1) A film that has been classified as a “G”, “PG”, “M”, “MA” or “R” film under the *Film and Computer Game Classification Act 1984* before the commencement of this clause is taken to have been classified G, PG, M, MA or R, respectively, under the Commonwealth Act.
- (2) A film that has been refused classification or taken to have been refused classification under the *Film and Computer Game Classification Act 1984* before the commencement of this clause is taken to have been classified RC under the Commonwealth Act.

3 Publications

A publication that has been classified as an unrestricted publication, a Category 1 restricted publication, a Category 2 restricted publication or a prohibited publication under the *Indecent Articles and Classified Publications Act 1975* before the commencement of this clause is taken to have been classified Unrestricted, Category 1 restricted, Category 2 restricted or RC, respectively, under the Commonwealth Act.

4 Computer games

- (1) A computer game that has been classified as a “G”, “G (8+)”, “M (15+)” or “MA (15+)” computer game under the Film and Computer Game Classification Act 1984 before the commencement of this clause is taken to have been classified G, G (8+), M (15+) or MA (15+), respectively, under the Commonwealth Act.
- (2) A computer game that has been refused classification or taken to have been refused classification under the Film and Computer Game Classification Act 1984 before the commencement of this clause is taken to have been classified RC under the Commonwealth Act.

5 Advertisements

An advertisement relating to a film or computer game that has been approved, or disapproved, under Part 2 of the *Film and Computer Game Classification Act 1984* before the commencement of this clause is taken to have been approved or refused approval, respectively, under the Commonwealth Act.

6 Pending proceedings for offences

Any proceedings for an offence under the *Film and Computer Game Classification Act 1984* or the *Indecent Articles and Classified Publications Act 1975* that were pending as at the commencement of this clause are to be dealt with as if this Act had not been enacted.

Note. Section 97 of the Commonwealth Act provides that a pending application under a State Act (eg for the classification of a film, publication or computer game) may be dealt with as if it had been made under the Commonwealth Act. Also, section 96 of the Commonwealth Act provides that a decision of the former Censorship Board or by a censor has effect as if it had been made by the Classification Board under the Commonwealth Act.

Schedule 2 Amendment of Crimes Act 1900

(Section 66)

[1] Section 1 Short title and contents of Act

Omit the matter relating to Part 6A.

[2] Section 1

Omit item (2AB) of the matter relating to Part 10.

[3] Part 6A Possession of Child Pornography

Omit the Part.

[4] Section 357EB Police may enter and search premises for child pornography

Omit the section.

[5] Sections 578B—578E

Insert after section 578A:

578B Possession of child pornography

(1) In this section:

child pornography means a film, publication or computer game classified RC, or an unclassified film, publication or computer game that would, if classified, be classified RC, on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in sexual activity) who is a child under 16 or who looks like a child under 16.

Classification Board means the Classification Board established under the Commonwealth Act.

classified means classified under the Commonwealth Act.

Commonwealth Act means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.

computer game, film and publication each have the same meanings, respectively, as in the Commonwealth Act.

law enforcement agency has the same meaning as in section 13 of the Criminal Records Act 1991, and includes a person or body prescribed by the regulations for the purpose of this definition.

- (2) A person who has in his or her possession any child pornography is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 12 months (or both).

- (3) Nothing in this section makes it an offence:
- (a) for any member or officer of a law enforcement agency to have any child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law, or
 - (b) for any person to have any child pornography in his or her possession in the exercise or performance of a power, function or duty relating to the classification of such material conferred or imposed on the person by or under any Act or law, or
 - (c) for a person to have in his or her possession any film, publication or computer game that is classified other than as RC.

- (4) Proceedings for an offence under this section:
 - (a) are not to be commenced later than 6 months after the date of the alleged offence, and
 - (b) in the case of a film, publication or computer game that is unclassified at the time of the alleged offence, are not to be commenced until the film, publication or computer game concerned has been classified, and
 - (c) are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (5) It is a defence to a prosecution under this section to prove:
 - (a) that the defendant did not know, or could not reasonably be expected to have known, that the film, publication or computer game concerned is classified RC or would be classified RC, or
 - (b) that the person depicted in the material was of or above the age of 16 at the time when the film, computer game or publication was made, taken, produced or published.
- (6) In any proceedings under this section, a certificate issued under section 87 of the Commonwealth Act signed (or purporting to be signed) by the Director of the Classification Board (or by the Deputy Director of the Classification Board) and stating that the film, publication or computer game concerned is classified RC on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in sexual activity) who is a child under 16 or who looks like a child under 16 is prima facie evidence of the matter stated in the certificate.
- (7) A court that convicts a person of an offence under this section may order that any child pornography in respect of which the offence was committed is to be destroyed or otherwise disposed of as the court thinks fit.

578C Publishing indecent articles

(1) In this section:

article includes any thing:

- (a) that contains or embodies matter to be read or looked at, or
- (b) that is to be looked at, or
- (c) that is a record, or
- (d) that can be used, either alone or as one of a set, for the production or manufacture of any thing referred to in paragraphs (a), (b) or (c),

but it does not include:

- (e) any film that is classified (other than as RC or X) under the Commonwealth Act, or
- (f) any publication that is classified Unrestricted, Category 1 restricted or Category 2 restricted under the Commonwealth Act, or
- (g) any computer game that is classified (other than as RC) under the Commonwealth Act, or
- (h) any film, publication or computer game that is the subject of an exemption under Division 3 of Part 6 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*.

Commonwealth Act means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.

computer game, *film* and *publication* each have the same meanings, respectively, as in the Commonwealth Act.

publish includes:

- (a) distribute, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell, offer for sale, let on hire or offer to let on hire, or

- (b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a), or
- (c) print, photograph or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing such an act.

record means a gramophone record or a wire or tape, or a film, and any other thing of the same or of a different kind or nature, on which is recorded a sound or picture and from which, with the aid of a suitable apparatus, the sound or picture can be produced (whether or not it is in a distorted or altered form).

- (2) A person who publishes an indecent article is guilty of an offence.

Maximum penalty: in the case of an individual— 100 penalty units or imprisonment for 12 months (or both), and in the case of a corporation— 200 penalty units.

- (3) Nothing in this section makes it an offence for:
 - (a) a person to publish an indecent article for the purposes of an application for classification under the Commonwealth Act,
 - (b) for any member or officer of a law enforcement agency (within the meaning of the *Criminal Records Act 1991*) to publish an indecent article in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law.
- (4) For the purposes of this section, an article may be indecent even though part of it is not indecent.
- (5) Proceedings for an offence under this section are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

- (6) In any proceedings for an offence under this section in which indecency is in issue, the opinion of an expert as to whether or not an article has any merit in the field of literature, art, medicine or science (and if so, the nature and extent of that merit) is admissible as evidence.

578D Police may enter and search premises for child pornography or indecent articles

- (1) A police officer may apply to an authorised justice for the issue of a search warrant if the police officer believes on reasonable grounds that an offence under section 578B or 578C is being committed in or on any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a police officer:
- (a) to enter and search the premises concerned for evidence of an offence under section 578B or 578C, and
 - (b) to seize any thing that may be evidence of such an offence.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section:

authorised justice has the same meaning as in the *Search Warrants Act 1985*.

578E Offences relating to advertising or displaying products associated with sexual behaviour

- (1) This section applies to products (such as articles, compounds, preparations or devices, but not printed matter) that are primarily concerned with, or intended to be used in connection with, sexual behaviour.

- (2) Any person who carries on, or who is engaged in, the business of selling or disposing of products to which this section applies must not:
- (a) advertise, or cause another person to advertise, in any manner the nature of that business, or
 - (b) exhibit or display any such products:
 - (i) to a person who has not consented to or requested the exhibition or display, or
 - (ii) in a manner so that they can be seen from outside the premises of the business by members of the public.

Maximum penalty: in the case of an individual— 100 penalty units or imprisonment for 12 months (or both), and in the case of a corporation—200 penalty units.

- (3) Nothing in this section makes it an offence for a person who carries on (or who is engaged in) the business of selling or disposing of products to which this section applies to advertise the nature of that business to a person who carries on (or who is engaged in) a business or profession that ordinarily involves selling or disposing of, or advising on or prescribing the use of, such products.
- (4) This section does not apply:
- (a) to any person who carries on (or who is engaged in) a business that sells or disposes of contraceptive devices or compounds (but not any other type of product to which this section applies), or
 - (b) to such persons, or classes of persons, as the Minister may, by notice published in the Gazette, specify for the purposes of this section.

- (5) A person can rely on the exemption provided by subsection (4) (a) only if the contraceptive devices or compounds are not displayed or exhibited to public view in any window or entrance to the premises of the business.
- (6) Proceedings for an offence under this section are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Schedule 3 Consequential amendment of other Acts

(Section 67)

3.1 Children (Detention Centres) Act 1987 No 57

Section 17A Detainees not to be supplied with or allowed alcohol, tobacco or adult films

Omit subsection (2). Insert instead:

- (2) The superintendent must not allow in a detention centre any film classified RC, X or R under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.

3.2 Local Government Act 1993 No 30

Dictionary

Omit “*Film and Video Tape Classification Act 1984*” wherever occurring from the definitions of *drive-in theatre* and *open-air theatre*.

Insert instead “*Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth”.

3.3 Search Warrants Act 1985 No 37

[1] Section 10 Definitions

Insert in the definition of *search warrant* in alphabetical order:

section 55 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*,

[2] Section 10

Omit the matter relating to the *Crimes Act 1900* from the definition of *search warrant*.

Insert instead:

sections 357EA and 578D of the *Crimes Act 1900*,

[3] Section 10

Omit the matter relating to the *Film and Video Tape Classification Act 1984* and the *Indecent Articles and Classified Publications Act 1975*.

Note National Classification Code

Note National Classification Code

Classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear and see what they want,
- (b) minors should be protected from material likely to harm or disturb them,
- (c) everyone should be protected from exposure to unsolicited material that they find offensive,
- (d) the need to take account of community concerns about:
 - (i) depictions that condone or incite violence, particularly sexual violence, and
 - (ii) the portrayal of persons in a demeaning manner.

Publications

Publications are to be classified in accordance with the following Table:

Description of publication	Classification
1. Publications that: <ul style="list-style-type: none">(a) describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified, or(b) describe or depict in a way that is likely to cause offence to a reasonable adult, a minor who is, or who appears to be, under 16 (whether the minor is engaged in sexual activity or not), or(c) promote, incite or instruct in matters of crime or violence.	RC

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| <p>2. Publications (except RC publications) that:</p> <p>(a) explicitly depict sexual or sexually related activity between consenting adults in a way that is likely to cause offence to a reasonable adult, or</p> <p>(b) depict, describe or express revolting or abhorrent phenomena in a way that is likely to cause offence to a reasonable adult and are unsuitable for a minor to see or read.</p> | <p>Category 2
restricted</p> |
| <p>3. Publications (except RC publications and Category 2 restricted publications) that:</p> <p>(a) explicitly depict nudity, or describe or impliedly depict sexual or sexually related activity between consenting adults, in a way that is likely to cause offence to a reasonable adult, or</p> <p>(b) describe or express in detail violence or sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult, or</p> <p>(c) are unsuitable for a minor to see or read.</p> | <p>Category 1
restricted</p> |
| <p>4. All other publications.</p> | <p>Unrestricted</p> |

Films

Films are to be classified in accordance with the following Table:

Description of film	Classification
<p>1. Films that:</p> <p>(a) depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified, or</p>	<p>RC</p>

Note National Classification Code

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| <ul style="list-style-type: none"> (b) depict in a way that is likely to cause offence to a reasonable adult a minor who is, or who appears to be, under 16 (whether or not engaged in sexual activity), or (c) promote, incite or instruct in matters of crime or violence. | |
| <ul style="list-style-type: none"> 2. Films (except RC films) that: <ul style="list-style-type: none"> (a) explicitly depict sexual activity between adults, where there is no sexual violence, coercion or non consent of any kind, in a way that is likely to cause offence to a reasonable adult, and (b) are unsuitable for a minor to see. | X |
| <ul style="list-style-type: none"> 3. Films (except RC films and X films) that are unsuitable for a minor to see. | R |
| <ul style="list-style-type: none"> 4. Films (except RC films, X films and R films) that depict, express or otherwise deal with sex, violence or coarse language in such a manner as to be unsuitable for viewing by persons under 15. | MA |
| <ul style="list-style-type: none"> 5. Films (except KC films, X films, R films, MA films) that cannot be recommended for viewing by persons who are under 15 years. | M |
| <ul style="list-style-type: none"> 6. Films (except RC films, R films, X films, MA films and M films) that cannot be recommended for viewing by persons who are under 15 without the guidance of their parents or guardians. | PG |
| <ul style="list-style-type: none"> 7. All other films. | G |

Computer games

Computer games are to be classified in accordance with the following Table:

Description of computer game	Classification
1. Computer games that: <ul style="list-style-type: none"> (a) depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified, or (b) depict in a way that is likely to cause offence to a reasonable adult a minor who is, or who appears to be, under 16 (whether or not engaged in sexual activity), or (c) promote, incite or instruct in matters of crime or violence, or (d) are unsuitable for a minor to see or play. 	RC
2. Computer games (except RC computer games) that depict, express or otherwise deal with sex, violence or coarse language in such a manner as to be unsuitable for viewing or playing by persons under 15.	MA (15+)
3. Computer games (except RC and MA (15+) computer games) that cannot be recommended for viewing or playing by persons who are under 15.	M (15+)

Note National Classification Code

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| 4. Computer games (except RC, MA (15+) and M (15+) computer games) that cannot be recommended for viewing or playing by persons who are under 8. | G (8+) |
| 5. All other computer games. | G |

[Minister's second reading speech made in—
Legislative Council on 18 October 1995
Legislative Assembly on 5 December 1995]