

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

[1995-63]



New South Wales

## Status Information

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### Authorisation

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New South Wales

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



New South Wales

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.

## 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 and the classification guidelines (as determined under section

12 of that 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.

**Advertising Scheme** means the scheme determined from time to time under section 31 of the Commonwealth Act.

**approved form** means a form approved under section 8A of the Commonwealth Act.

**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.

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

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

**Convenor** means the Convenor of the Review Board appointed under section 74 of the Commonwealth Act.

**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.

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

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

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

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

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

**minor** means a person who is under 18.

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

**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.

**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.



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

**Review Board** means the Classification Review Board established by the Commonwealth Act.

**sell** means sell or exchange or let on hire, and includes offer or display for sale or exchange or hire, agree to sell, exchange or hire and cause or permit to be sold or exchanged or hired, whether by retail or wholesale.

**subject to a conditional cultural exemption** has the same meaning as in the Commonwealth Act.

**submittable publication** has the same meaning as in the Commonwealth Act, and includes a publication called in by the Director under:

- (a) section 46 of this Act, or
- (b) a provision of an Act of another State or a Territory that corresponds to that section.

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

#### **4A Application of Act**

This Act does not apply to:

- (a) exempt films or exempt computer games, or
- (b) broadcasting services to which the [Broadcasting Services Act 1992](#) of the Commonwealth applies, or
- (c) a publication, film or computer game that is subject to a conditional cultural exemption.

**Note—**

A publication, film or computer game is subject to a conditional cultural exemption only in relation to the relevant demonstration, exhibition or screening (see sections 6C and 6E of the Commonwealth Act).

#### **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.

#### **5A Films consisting only of classified films**

Despite any other provision of this Act, a film:

- (a) that is contained on one device, and
- (b) that consists only of 2 or more classified films,

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

## **Part 2 Films**

### **6 Sale or public exhibition of unclassified, RC or X 18+ films prohibited**

A person must not sell or publicly exhibit:

- (a) a film classified RC or X 18+, 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 15+ or R 18+—50 penalty units for an individual, 100 penalty units for a corporation
- in the case of a film classified RC or X 18+ or an unclassified film that is subsequently classified RC or X 18+—100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.

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

- (1) 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.

- (2) Subsection (1) is not contravened by the sale or exhibition of a classified film:
- (a) under a title different from that under which it is classified if it is contained on one device that consists only of 2 or more classified films, or
  - (b) with modifications referred to in section 21 (2) or (3) of the Commonwealth Act or to which section 20A of that Act applies,
- or both.

## **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 18+ or an unclassified film that would, if classified, be classified RC or X 18+.

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 18+, or an unclassified film that would, if classified, be classified R 18+, 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 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.

(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 18+ or R 18+ 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 18+ or R 18+ or an unclassified film that would, if classified, be classified RC, X 18+ or R 18+.

Maximum penalty: 20 penalty units.

#### **11 Minors over 15 not to buy or attend RC, X 18+ or R 18+ films**

A minor who is 15 or older must not:

(a) buy a film classified RC, X 18+ or R 18+, or

(b) attend the exhibition in a public place of a film classified RC, X 18+ or R 18+, knowing that the film is so classified.

Maximum penalty: 5 penalty units.

#### **12 R 18+ films not to be publicly exhibited in presence of minors**

(1) A person must not publicly exhibit a film classified R 18+ 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 15+ films not to be publicly exhibited in presence of minors under 15**

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

Maximum penalty: 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 18+ or R 18+ films in presence of minors**

- (1) A person must not privately exhibit in the presence of a minor a film classified RC or X 18+ or an unclassified film that would, if classified, be classified RC or X 18+.

Maximum penalty: 100 penalty units.

- (2) A person must not privately exhibit in the presence of a minor a film classified R 18+, or an unclassified film that would, if classified, be classified R 18+, 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.

- (4) If:

- (a) a film is reclassified under the Commonwealth Act, or
- (b) the Board revokes a classification or consumer advice for a film under section 22B (3) or 22CH (1) of that Act,

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

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

#### **16 Keeping unclassified, RC or X 18+ films with other films**

- (1) If a person keeps or possesses any unclassified film or film classified RC or X 18+ on any premises where classified films are sold, the person and the occupier of the premises are each guilty of an offence.

Maximum penalty: 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 18+ 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 18+, or
- (b) an unclassified film that would, if classified, be classified RC or X 18+.

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+.

### **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 18+, or
- (b) an unclassified film that would, if classified, be classified RC or X 18+,  
with the intention of selling or exhibiting the film.

- (2) A person must not copy:

- (a) a film classified RC or X 18+, or
- (b) an unclassified film that would, if classified, be classified RC or X 18+,  
with the intention of selling or exhibiting the film or the copy.

- (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.

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

## **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) Subject to subsection (1A), 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.

(1A) Subject to any condition imposed by the Board under section 13A (2) of the Commonwealth Act, if the sale or delivery takes place in a restricted publications area, the package need not be sealed but on delivery must be contained in an opaque wrapper.

(2) If:

- (a) a publication is reclassified under section 22CH (4), 39 or 97A of the Commonwealth Act, or



- (b) the Board revokes a classification for a publication under section 22B (3) or 22CH (1) of that Act,

it is sufficient compliance with subsection (1) for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

## **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) a publication is reclassified under section 22CH (4), 39 or 97A of the Commonwealth Act, or
  - (b) the Board revokes a classification for a publication under section 22B (3) or 22CH (1) of that Act,

it is sufficient compliance with subsection (1) (d) for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

## **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.

### **22A Sale or delivery of publications contrary to conditions**

If a publication is classified Unrestricted or Category 1 restricted subject to a condition imposed under section 13A of the Commonwealth Act, a person must not sell or deliver the publication except in accordance with that condition.

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

### **22B Consumer advice for Unrestricted publications**

A person must not sell a publication classified Unrestricted in respect of which the Board has determined consumer advice under section 20 (2) of the Commonwealth Act unless the consumer advice is displayed on the publication or the packaging of the publication.

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

(3) If:

- (a) a publication is reclassified under section 22CH (4), 39 or 97A of the Commonwealth Act, or
- (b) the Board revokes a classification for a publication under section 22B (3) or 22CH (1) of that Act,

it is sufficient compliance with this section for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

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

### **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, PG or M—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+ or R 18+—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**

(1) 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.

(2) Subsection (1) is not contravened by the sale or demonstration of a classified computer game:

- (a) under a title different from that under which it is classified if it is contained on one device that consists only of 2 or more classified computer games, or
- (b) with modifications to which section 20A of the Commonwealth Act applies or that are referred to in section 21 (2) or (3) of that Act,

or both.

## **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, R 18+ 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.

(1A) A person must not sell or deliver to a minor a computer game classified R 18+, or an unclassified computer game that would, if classified, be classified R 18+, 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.

(1B) It is a defence to a prosecution for an offence under subsection (1A) 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 an adult, 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.

(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.

### **30A Parents not to permit minors to attend demonstration of RC or R 18+ computer games**

A person who is the parent or guardian of a minor must not permit the minor to attend the demonstration in a public place of a computer game classified RC or R 18+ or an unclassified computer game that would, if classified, be classified RC or R 18+.

Maximum penalty: 20 penalty units.

### **31 Minors over 15 not to buy or attend demonstration of RC or R 18+ computer games**

A minor who is 15 or older must not:

- (a) buy a computer game classified RC or R 18+, or
- (b) attend the demonstration of a computer game classified RC or R 18+ in a public place,

knowing that the computer game is so classified.

Maximum penalty: 5 penalty units.

**31A R 18+ computer games not to be publicly demonstrated in presence of minors**

- (1) A person must not publicly demonstrate a computer game classified R 18+ if a minor is present during any part of the demonstration.

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 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 an adult, 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 demonstration took place in the course of that employment.

**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 or R 18+ 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.

- (1A) A person must not privately demonstrate in the presence of a minor a computer game classified R 18+, or an unclassified computer game that would, if classified, be classified R 18+, unless the person is a parent or guardian of the minor.

Maximum penalty: 50 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 R 18+ or 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.
- (4A) A person must not make a computer game available for playing on a pay and play basis (for example, a coin operated arcade game) unless the determined markings relevant to the classification of the computer game and relevant consumer advice, if



any, are displayed on the device used for playing the game.

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

(5) If:

(a) a computer game is reclassified under the Commonwealth Act, or

(b) the Board revokes a classification or consumer advice for a computer game under section 22B (3) or 22CH (1) of that Act,

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

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

### **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.
- (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.

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

## **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:
  - (a) if the advertisement has been refused approval, or would be refused approval if submitted for approval, under section 29 of the Commonwealth Act, or
  - (b) if the advertisement was approved under section 29 of the Commonwealth Act and the approval is revoked under section 13 (5) or 21A of that 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 18+,
- (b) (Repealed)
- (c) a submittable publication,
- (d) a publication classified RC,
- (e) (Repealed)
- (f) a computer game classified RC.

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

(1A) A person must not publish an advertisement for an unclassified film or unclassified computer game otherwise than in accordance with the Advertising Scheme.

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, during a program for the exhibition of a classified film (***the feature film***), publicly exhibit an advertisement for another film or a computer game unless the advertised film or advertised computer game has the same classification as (or has a lower classification than) the feature film.

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

(2) A person must not sell a film that contains a classified film (***the feature film***) and an advertisement for another film or a computer game unless the advertised film or advertised computer game has the same classification as (or has a lower classification than) the feature film.

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

(2A) A person must not publicly exhibit an advertisement for an unclassified film during a program for the exhibition of a classified film unless the exhibition of that advertisement with the classified film complies with the Advertising Scheme.

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

- (2B) A person must not sell a classified film that is accompanied by an advertisement for an unclassified film or unclassified computer game unless the sale of that classified film with that advertisement complies with the Advertising Scheme.

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

- (3) The hierarchy of classification is as follows:

- (a) G is a lower classification than PG, M, MA 15+ or R 18+,
- (b) PG is a lower classification than M, MA 15+ or R 18+,
- (c) M is a lower classification than MA 15+ or R 18+,
- (d) MA 15+ is a lower classification than R 18+.

#### **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 or a film unless the advertised game or advertised film 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.

- (1A) A person must not sell, or publicly demonstrate, a classified computer game that is accompanied by an advertisement for an unclassified computer game or unclassified film unless the sale or public demonstration of the classified computer game with that advertisement complies with the Advertising Scheme.

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

- (2) The hierarchy of classification is as follows:

- (a) G is a lower classification than PG, M, MA 15+ or R 18+,
- (b) PG is a lower classification than M, MA 15+ or R 18+,
- (c) M is a lower classification than MA 15+ or R 18+,
- (d) MA 15+ is a lower classification than R 18+.

#### **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 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) a film, publication or computer game is reclassified under section 22CH (4), 39 or 97A of the Commonwealth Act, or
- (b) the Board revokes a classification or consumer advice for a film, publication or computer game under section 22B (3) or 22CH (1) of that Act,

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

#### **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.

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

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

(3) If:

- (a) a film, publication or computer game is reclassified under section 22CH (4), 39 or 97A of the Commonwealth Act, or
  - (b) the Board revokes a classification or consumer advice for a film, publication or computer game under section 22B (3) or 22CH (1) of that Act,
- display of the determined markings and consumer advice applicable to the film, publication or computer game before that reclassification or revocation is sufficient compliance with subsection (2) for a period of 30 days after the decision to reclassify or revoke 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, and
- (c) the publication is not subject to a conditional cultural exemption,

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.

#### **46A Calling in films for classification**

(1) If:

- (a) the Director has reasonable grounds to believe that an unclassified film is not an exempt film, and
- (b) the film is being published in New South Wales, or the Director has reasonable grounds to believe that it will be published in New South Wales, and
- (c) the film is not subject to a conditional cultural exemption,

the Director may, by notice in writing given to the publisher of the film, require the publisher to submit an application for classification of the film.

- (2) 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 film (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, and
- (c) the computer game is not subject to a conditional cultural exemption,

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.

- (1A) If:

- (a) the Director has reasonable grounds to believe that an unclassified computer game is not an exempt computer game, and
- (b) the computer game is being published in 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 computer game, require the publisher to submit an application for classification of the computer 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) or (1A) 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 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.

#### **48A Calling in a publication, film or computer game for reclassification**

- (1) If:

(a) the Board proposes to reclassify a publication, film or computer game under section 39 of the Commonwealth Act, and

(b) the publisher of the publication, film or computer game resides in New South Wales or has an office in New South Wales,

the Director may, by notice in writing given to the publisher, require the publisher to

submit a copy of the publication, film or computer game for the purpose of reclassifying it.

- (2) A person to whom 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 have a copy of the publication, film or computer game.

#### **48B Obtaining copies for review**

- (1) If:

- (a) an application is made for a review of a classification decision under the Commonwealth Act by a person who is not the original applicant for classification of the publication, film or computer game concerned, and
- (b) the Board or Review Board does not have a copy of the publication, film or computer game and a copy is not available to it, and
- (c) the original applicant or the publisher of the publication, film or computer game resides in New South Wales or has an office in New South Wales,

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

- (2) A person to whom 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 have a copy of the publication, film or computer game.

## **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, 100 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 (Repealed)**

#### **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 film, or 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, or computer game, classified R 18+, 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 officer 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 officer 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) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* 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 officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## 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 the 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) The 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 the Local Court, or

(b) before the Supreme Court in its summary jurisdiction.

(2) If proceedings are brought in the 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**

(1) In any proceedings for an offence under this Act or the *Crimes Act 1900*, a certificate issued under the Commonwealth Act signed (or purporting to be signed) by the Director, Deputy Director or Convenor 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.

(2) Subsection (1) extends to a certificate (whether given before or after the commencement of this subsection) that states a matter:

(a) at the time the certificate is given, or at any other earlier specified time, or

(b) in respect of any specified period before the certificate is given.

### **58A Proof of classification by agreement**

(1) Subject to subsection (2), if a person is charged with an offence under this Act, the

prosecution may, prior to the trial, give the accused a notice:

(a) setting out:

- (i) the title or apparent title (if any) of the publication, film or computer game, and
- (ii) particulars of the offence in relation to which the notice is served, and

(b) stating that the accused is entitled to view the publication, film or computer game, and

(c) inviting the accused to indicate, by completing and signing a statement to that effect set out in the notice and returning the notice to an address set out in the notice, that the accused agrees that, on a specified date, the publication, film or computer game:

- (i) was classified at the specified classification, or
- (ii) was unclassified but would, if classified, have been of the specified classification,

as the case may require, and

(d) stating that if the accused does not indicate his or her agreement in accordance with paragraph (c) within the period specified in the notice (being not less than the prescribed period), the accused will, if found guilty of the offence specified in the notice, be liable to pay an amount equal to:

- (i) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a publication, film or computer game was unclassified but would, if classified, have been of a particular classification—the fee for classification of the publication, film or computer game, or
- (ii) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a publication, film or computer game was classified at a particular classification—the fee for obtaining a certificate of a kind described in section 58 specifying the classification of the publication, film or computer game at that date.

(2) This section does not apply where the offence with which a person is charged involves an allegation that a publication, film or computer game was unclassified but would, if classified, be classified at a classification other than X 18+ or RC.

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



- (4) In proceedings for an offence under this Act, a notice under this section containing a statement, completed and signed by the accused, that the accused agrees that, on a specified date, the publication, film or computer game:
- (a) was classified at the specified classification, or
  - (b) was unclassified but would, if classified, have been of a specified classification,
- is evidence of, and in the absence of evidence to the contrary is proof of, the matter agreed.
- (5) If:
- (a) a person served with a notice under this section does not deliver the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice, and
  - (b) the person is found guilty of the offence specified in the notice,
- the prosecution is entitled, on application to the court making the finding of guilt, to recover from the person an amount equal to the fee described in the notice.
- (6) In proceedings in which an application referred to in subsection (5) is made, a certificate signed or purporting to be signed by the Commissioner of Police and stating that:
- (a) a person was served with a notice set out in the certificate and did not return the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice, and
  - (b) a specified amount was paid as the fee described in the notice,
- is evidence of, and in the absence of evidence to the contrary is proof of, the facts stated in the certificate.
- (7) If:
- (a) a notice is served under this section in relation to an offence involving an allegation that a publication, film or computer game was unclassified but would, if classified, have been of a specified classification, and
  - (b) the person served with the notice does not return the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice, and
  - (c) the publication, film or computer game is subsequently classified at a higher classification than the classification specified in the notice,
- this section applies as if the notice had specified that higher classification.

- (8) In this section, **prescribed period** means 14 days from the date of service of the notice or, if the person served with the notice requests that he or she be allowed to view the publication, film or computer game the subject of the notice, 14 days from the time fixed by the prosecution for the viewing.

## **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:
    - (i) the film, publication or computer game has been classified, or
    - (ii) the accused, by notice under section 58A, agrees that the publication, film or computer game if classified would have been the classification agreed, and
  - (b) are not to be commenced later than 12 months after the date on which:
    - (i) the film, publication or computer game was classified, or
    - (ii) the accused returned the notice under section 58A,whichever is relevant.
- (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 or section 91H of the [Crimes Act 1900](#), 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.

### 61A Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section:

**authorised officer** means, in relation to a particular offence, a person belonging to a class of persons specified in the regulations in relation to that offence.

### 62 Liability of directors etc for offences by corporation—accessory to the commission of the offences

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or

(iii) conspires with others to effect the commission of the corporate offence, or

(iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### **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 18+).

## **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, 67 (Repealed)**

### **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 the following Acts:

this Act

the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001*

*Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Act 2004*

*Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2007*

*Classification (Publications, Films and Computer Games) Enforcement Amendment (Advertising) Act 2008*

*Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2010*

any other Act that amends this Act

- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the Act concerned 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.

## Part 3 Provisions consequent on Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001

### 7 Definition

In this Part:

**amending Act** means the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001*.

### 8 Transitional provisions

- (1) Section 34 (4A) and (4B), as inserted by Schedule 1 [13] to the amending Act, apply to a computer game whether published before or after the commencement of Schedule 1 [13].
- (2) Sections 46A and 48A, as inserted by Schedule 1 [18] and [21] to the amending Act, apply to a publication, film or computer game whether published before or after the commencement of Schedule 1 [18] and [21], respectively.
- (3) An amendment to this Act made by any other provision of the amending Act applies only to:
  - (a) a publication, film or computer game first published on or after the commencement of that provision, or
  - (b) a publication, film or computer game for which an application for classification is made on or after that commencement.

## Part 4 Provisions consequent on Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Act 2004

### Note—

On the commencement of Schedule 1 to the *Classification (Publications, Films and Computer Games) Amendment Act 2004* of the Commonwealth, classifications for films and computer games will be altered to establish new classifications. The changes to this Act reflect the changes made under the Commonwealth amending Act.

Schedule 1 to the *Classification (Publications, Films and Computer Games) Amendment Act 2004* of the Commonwealth provides for the conversion of pre-commencement classifications to the equivalent new classifications under the Commonwealth Act. Classifications listed below in Column 1 and Column 2 are being replaced by the classification specified opposite in Column 3.

**Column 1**

**Column 2**

**Column 3**

Previous classification for films	Previous classification for computer games	New classification for films and computer games
G	G	G
PG	G (8+)	PG
M	M (15+)	M
MA	MA (15+)	MA 15+
R		R 18+ (Films only)
X		X 18+ (Films only)
RC	RC	RC

## 9 Definitions

In this Part:

**Commonwealth amending Act** means the *Classification (Publications, Films and Computer Games) Amendment Act 2004* of the Commonwealth.

**equivalent former classification** means:

- (a) in relation to a film classified G, PG, M, MA 15+, R 18+, X 18+ or RC, a classification of G, PG, M, MA, R, X or RC respectively, or
- (b) in relation to a computer game classified G, PG, M, MA 15+ or RC, a classification of G, G (8+), M (15+), MA (15+) or RC respectively.

**State amending Act** means the *Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Act 2004*.

## 10 Amendments extend to films and computer games classified before commencement

- (1) An amendment made by the State amending Act to this Act or any other Act extends to a film or computer game classified before the commencement of the amendment.
- (2) For that purpose, a reference in this Act or any other Act to a classification of a film or computer game, in relation to conduct that occurs or is alleged to occur on or after the commencement of any amendment made by the State amending Act, is a reference to the classification that the film or computer game has or is taken to have under the Commonwealth Act on or after the commencement of Schedule 1 to the Commonwealth amending Act.
- (3) Unless the regulations otherwise provide, if a film or computer game was classified prior to the commencement of Schedule 1 to the Commonwealth amending Act:
  - (a) a person does not commit an offence under section 15 (3) or 34 (4) by selling the film or computer game in a container, wrapping or casing that displays a marking



indicating the equivalent former classification of the film or computer game, and

- (b) a person does not commit an offence under section 43 (2) by publishing an advertisement for the film or computer game that indicates the equivalent former classification of the film or computer game.

#### **11 Offences committed before commencement of State amending Act to be dealt with under old law**

- (1) Any proceedings for an offence under this Act or any other Act in relation to conduct that occurred or is alleged to have occurred before the commencement of Schedule 1 to the Commonwealth amending Act are to be dealt with as if the State amending Act had not been enacted, except as otherwise provided by this clause.
- (2) For the purpose of any such proceedings, a reference in this Act or any other Act to a classification of a film or computer game is a reference to the classification that had effect under the Commonwealth Act before the commencement of Schedule 1 to the Commonwealth amending Act.
- (3) If such proceedings relate to an offence under this Act with respect to a film or computer game that was unclassified at the commencement of Schedule 1 to the Commonwealth amending Act, the following provisions apply:
- (a) for the purpose of section 59, proceedings for the offence may be commenced when the film or computer game has been classified under the Commonwealth Act (as amended by the Commonwealth amending Act),
- (b) a film or computer game classified G, PG, M, MA 15+, R 18+, X 18+ or RC, after the commencement of Schedule 1 to the Commonwealth amending Act, is taken to have been classified with the equivalent former classification,
- (c) evidence or proof that a film or computer game has been classified G, PG, M, MA 15+, R 18+, X 18+ or RC is taken to be evidence or proof of the equivalent former classification.

### **Part 5 Provisions consequent on Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2007**

#### **12 Exemptions**

- (1) Any directions or approvals given by the Director under section 51 and in force immediately before the commencement of this clause are taken to have been given under section 51 as substituted by the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2007*.
- (2) Any applications for directions or approvals made under section 51 and pending immediately before the commencement of this clause are taken to have been made

under section 51 as substituted by the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2007*.

- (3) Any directions or guidelines given by the Minister under section 51 and in force immediately before the commencement of this clause are taken to have been given under section 51 as substituted by the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2007*.

## **Part 6 Provisions consequent on Classification (Publications, Films and Computer Games) Enforcement Amendment (Advertising) Act 2008**

### **13 Advertisements for unclassified films**

- (1) A person does not commit an offence under section 39 (1A) by publishing an advertisement for an unclassified film if the advertisement is published in accordance with a transitional Commonwealth regulation.
- (2) In this clause:

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

## **Part 7 Provisions consequent on Courts and Other Justice Portfolio Legislation Amendment Act 2015**

### **14 Exemptions**

- (1) An exemption under section 51 that was in force immediately before the repeal of that section by the *Courts and Other Justice Portfolio Legislation Amendment Act 2015* remains in force according to its terms and section 51, as in force immediately before its repeal, continues to apply in respect of that exemption.
- (2) If an application made under section 51 has not been decided before the repeal of that section, the application is taken never to have been made.

## **Schedules 2, 3 (Repealed)**