



Australian Capital Territory

Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

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About this republication

The republished law

This is a republication of the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* effective from 31 December 1997 to 11 September 2001.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.



Australian Capital Territory

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (ENFORCEMENT) ACT 1995

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 31 December 1997

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Australian Capital Territory

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (ENFORCEMENT) ACT 1995

An Act to provide for the enforcement of a scheme of classification of publications, films and computer games and for other purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*.¹

Commencement

2.¹ (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence—

- (a) on the day fixed under subsection 2 (2) of the Commonwealth Act; or
- (b) if the provisions referred to in that subsection do not commence under that subsection within the period of 12 months beginning on the day on which the Commonwealth Act received Royal Assent—on the first day after the end of that period.

Interpretation

3. In this Act, unless the contrary intention appears—

“acceptable proof of age”, in relation to a person, means documentary evidence that might reasonably be accepted as applying to the person and as showing that the person is an adult;

“adult” means a person who is 18 years of age or older;

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- “advertisement” has the same meaning as in the Commonwealth Act;
- “approved advertisement” means an advertisement approved under the Commonwealth Act;
- “approved form” means a form approved by the Director and published in the *Commonwealth Gazette*;
- “Board” means the Classification Board established by section 45 of the Commonwealth Act;
- “business day” means a day other than a Saturday, a Sunday or a public holiday under the *Holidays Act 1958*;
- “buy” means buy or exchange or hire, and includes offer to buy or exchange or hire, agree to buy, exchange or hire and cause or permit to be bought or exchanged or hired, whether by retail or wholesale;
- “classification certificate” means a certificate issued under section 25 of the Commonwealth Act;
- “classified” means classified under the Commonwealth Act and includes re-classified under that Act;
- “Commonwealth Act” means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth;
- “computer game” has the same meaning as in the Commonwealth Act;
- “consumer advice” means consumer advice determined under section 20 of the Commonwealth Act;
- “court” means the Magistrates Court;
- “demonstrate” includes exhibit, display, screen or make available for playing;
- “Deputy Director” means the Deputy Director of the Board;
- “determined fee” means the fee determined by the Minister under section 67 for the purposes of the provision in which the expression occurs;
- “determined markings” means markings determined under section 8 of the Commonwealth Act;
- “Director” means the Director of the Board;

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“exhibit”, in relation to a film, means project or screen;

“film” has the same meaning as in the Commonwealth Act;

“guardian” means an adult who is exercising parental control over a minor;

“place” includes vacant land, premises, a vehicle, a vessel and an aircraft;

“publication” has the same meaning as in the Commonwealth Act;

“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;

“publish” has the same meaning as in the Commonwealth Act;

“restricted publications area” means any premises, or part of a premises, constructed and managed in accordance with section 61;

“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;

“X film” means a film classified X.

Exhibition of film

4. For the purposes of this Act, a person is taken to exhibit a film in a public place if the person—

- (a) arranges or conducts the exhibition of the film in the public place; or
- (b) has the superintendence or management of the public place in which the film is exhibited.

Application

5. This Act does not apply to broadcasting services to which the *Broadcasting Services Act 1992* of the Commonwealth applies.

PART II—FILMS

Division 1—Exhibition of films

Exhibition of film in public place

6. (1) A person shall not, without reasonable excuse, exhibit a film in a public place unless the film is classified.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person shall not, without reasonable excuse, exhibit a film in a public place unless the film, being classified, is exhibited—

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

Penalty: 50 penalty units.

Display of notice about classifications

7. A person shall not, without reasonable excuse, exhibit a film in a public place unless a notice in the approved form about classifications for films is displayed in a prominent place in that public place so that the notice is clearly visible to the public.

Penalty: 5 penalty units.

Exhibition of RC and X films

8. (1) A person shall not, without reasonable excuse, exhibit in a public place a film classified RC.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person shall not, without reasonable excuse, exhibit in a public place a film classified X except in a restricted publications area located in premises in a prescribed area.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Exhibition of unclassified, RC, X, R and MA films

9. A person shall not, without reasonable excuse, exhibit any of the following so that it can be seen from a public place:

- (a) an unclassified film which is subsequently classified RC, X, R or MA;

- (b) a film classified RC, X, R or MA.

Penalty:

- (a) in the case of a film classified MA or R, or an unclassified film which is subsequently classified MA or R—20 penalty units;
- (b) in the case of a film classified X, or an unclassified film which is subsequently classified X—50 penalty units or imprisonment for 6 months, or both;
- (c) in the case of a film classified RC, or an unclassified film which is subsequently classified RC—100 penalty units or imprisonment for 12 months, or both.

Attendance of minor at certain films—offence by parents etc.

10. A person who—

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

shall not, without reasonable excuse, permit the minor to attend the exhibition of the film.

Penalty: 20 penalty units.

Attendance of minor at certain films—offence by minor

11. A minor who is 15 years of age or older shall not, without reasonable excuse, attend the exhibition in a public place of a film classified X or R, knowing that the film is so classified.

Penalty: 5 penalty units.

Private exhibition of certain films in presence of minor

12. (1) A person shall not exhibit in a place other than a public place, in the presence of a minor a film classified RC, X or R or an unclassified film which is subsequently classified RC, X or R.

Penalty:

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- (a) in the case of a film classified RC, or an unclassified film which is subsequently classified RC—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a film classified X, or an unclassified film which is subsequently classified X—50 penalty units;
- (c) in the case of a film classified R, or an unclassified film which is subsequently classified R—20 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) to prove that—

- (a) the defendant believed on reasonable grounds that the minor was an adult; or
- (b) the defendant was the parent or guardian of the minor.

Attendance of minor at R film—offence of exhibitor

13. (1) A person shall not exhibit in a public place a film classified R if a minor is present during any part of the exhibition.

Penalty: 50 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) to prove that—

- (a) the minor produced to the defendant acceptable proof of age before the minor was admitted to the public place; or
- (b) the defendant believed on reasonable grounds that the minor was an adult.

Attendance of minor at MA film—offence of exhibitor

14. (1) A person shall not exhibit in a public place a film classified MA if—

- (a) a minor under 15 years of age is present during any part of the exhibition; and
- (b) the minor is not accompanied by his or her parent or guardian.

Penalty: 10 penalty units.

(2) For the purposes of subsection (1)—

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- (a) a minor does not cease to be accompanied if his or her parent or guardian is temporarily absent from the exhibition of the film; and
- (b) an offence is committed in respect of each unaccompanied minor present at the exhibition of the film.

(3) It is a defence to a prosecution for an offence against subsection (1) to prove that—

- (a) the defendant took all reasonable steps to ensure that a minor was not present in contravention of subsection (1);
- (b) the defendant believed on reasonable grounds that the minor was 15 years of age or over; or
- (c) the defendant believed on reasonable grounds that the person accompanying the minor was the minor's parent or guardian.

Division 2—Sale of films

Unclassified and RC films

15. A person shall not, without reasonable excuse, sell an unclassified film or a film classified RC.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

Classified films

16. A person shall not, without reasonable excuse, sell a classified film unless the film is sold—

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

Penalty: 50 penalty units.

Display of notice about classifications

17. A person shall not, without reasonable excuse, sell films on any premises unless a notice in the approved form about classifications for films is displayed in a prominent place on the premises so that the notice is clearly visible to the public.

Penalty: 5 penalty units.

Films to bear determined markings and consumer advice

18. (1) A person shall not, without reasonable excuse, sell a film unless the determined markings relevant to the classification of the film and relevant consumer advice, if any, are displayed on the container, wrapping or casing of the film.

Penalty: 10 penalty units.

(2) A person shall not, without reasonable excuse, sell an unclassified film if the container, wrapping or casing in which the film is sold bears a marking that indicates or suggests that the film has been classified.

Penalty: 30 penalty units.

(3) A person shall not, without reasonable excuse, sell a classified film if the container, wrapping or casing in which the film is sold bears a marking that indicates or suggests that the film is unclassified or has a different classification.

Penalty: 30 penalty units.

(4) If a film is reclassified under section 39 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.

Keeping unclassified or RC films with other films

19. (1) If a person keeps or possesses an unclassified film or a film classified RC on any premises where classified films are sold, the person and the occupier of the premises are each guilty of an offence punishable, on conviction, by a fine not exceeding 100 penalty units or imprisonment for 12 months, or both.

(2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant did not know, and could not reasonably have known, that—

- (a) the film was on the premises; or
- (b) the film was an unclassified film or a film classified RC.

X films

20. (1) If a film is classified X, a person shall not, without reasonable excuse—

- (a) display the film for sale except in a restricted publications area located in premises in a prescribed area;

- (b) sell the film to a person who has not made a direct request for it; or
- (c) sell the film unless it is contained in a package made of opaque material.

Penalty:

- (a) for a contravention of paragraph (a) or (b)—50 penalty units or imprisonment for 6 months, or both;
- (b) for a contravention of paragraph (c)—30 penalty units.

(2) A person shall not sell or copy an X film except in accordance with a licence under Part VI.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

Sale or delivery of certain films to minors

21. (1) A person shall not, without reasonable excuse, sell or deliver to a minor a film classified RC or an unclassified film which is subsequently classified RC.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person shall not sell or deliver to a minor a film classified X or R or an unclassified film which is subsequently classified X or R, unless the person is a parent or guardian of the minor.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

(3) It is a defence to a prosecution for an offence against subsection (2) to prove that—

- (a) the minor produced to the defendant acceptable proof of age before the defendant sold or delivered the film to the minor and the defendant believed on reasonable grounds that the minor was an adult;
- (b) in the case of the delivery of a film classified R—the minor was employed by the defendant or the defendant's employer and the delivery took place in the course of that employment; or
- (c) the defendant did not know, or could not reasonably have known—
 - (i) the film was classified X or R; or
 - (ii) in the case of an unclassified film which is subsequently classified X or R—it would subsequently be so classified.

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(4) A minor who is 15 years of age or older shall not, without reasonable excuse, buy a film classified X or R knowing that it is so classified.

Penalty: 5 penalty units.

(5) A person shall not sell or deliver to a minor under 15 years of age a film classified MA or an unclassified film which is subsequently classified MA, unless the person is the parent or guardian of the minor.

Penalty: 10 penalty units.

(6) It is a defence to a prosecution for an offence against subsection (5) to prove that—

- (a) the defendant believed on reasonable grounds that—
 - (i) the person was 15 years of age or older; or
 - (ii) the parent or guardian of the minor had consented to the sale or delivery; or
- (b) the defendant did not know, or could not reasonably have known—
 - (i) the film was classified MA; or
 - (ii) in the case of an unclassified film which is subsequently classified MA—it would subsequently be so classified.

Division 3—Miscellaneous

Power to demand name, age and address

22. (1) If a police officer has reasonable grounds for believing—

- (a) that a person to whom a film is being or is about to be exhibited, sold or delivered has contravened or is about to contravene section 11 or subsection 21 (4); and
- (b) that the person is under 18 years of age;

the police officer may demand the person's name, age and address.

(2) A person shall not give false particulars or fail or refuse to give satisfactory particulars demanded under subsection (1).

Penalty for a contravention of subsection (2): 5 penalty units.

Leaving films in certain places

23. A person shall not, without reasonable excuse, leave in a public place or, without the occupier's permission, on private premises—

- (a) a film classified RC, X, R or MA; or
- (b) an unclassified film which is subsequently classified RC, X, R or MA;

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

Penalty:

- (a) in the case of a film classified RC, or an unclassified film which is subsequently classified RC—100 penalty units or imprisonment for 12 months, or both;
- (b) in the case of a film classified X, or an unclassified film which is subsequently classified X—50 penalty units or imprisonment for 6 months, or both;
- (c) in the case of a film classified R or MA, or an unclassified film which is subsequently classified R or MA—20 penalty units.

Possession or copying of film

24. (1) A person shall not possess (other than for the purposes of classification or law enforcement)—

- (a) a film classified RC; or
- (b) an unclassified film;

with the intention of selling or exhibiting the film.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person shall not copy (other than for the purposes of classification or law enforcement)—

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

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(4) In proceedings for an offence against this section, evidence that a person made 10 or more copies of an unclassified film, or a film classified RC, is evidence that the person intended to sell or exhibit the film and, in the absence of evidence to the contrary, is proof of that fact.

PART III—PUBLICATIONS

Sale of unclassified RC publications

25. (1) A person shall not sell or deliver (other than for the purposes of classification or law enforcement)—

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

knowing that it is such a publication.

Penalty:

- (a) in the case of a submittable publication—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a publication classified RC—100 penalty units or imprisonment for 12 months, or both.

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

Category 1 restricted publications

26. (1) A person shall not, without reasonable excuse, 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 bears the determined markings; or
- (b) if the packaging is an opaque material—both the publication and the package bear the determined markings.

Penalty: 30 penalty units.

(2) If a publication is reclassified under section 39 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 bears the determined markings applicable to the publication before reclassification.

Category 2 restricted publications

27. (1) A person shall not, without reasonable excuse—

- (a) display a publication that is classified Category 2 restricted except in a restricted publications area; or
- (b) deliver a publication that is classified Category 2 restricted to a person who has not made a direct request for the publication.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) A person shall not, without reasonable excuse—

- (a) deliver a publication that is classified Category 2 restricted to a person unless it is contained in a package made of opaque material; or
- (b) publish a publication that is classified Category 2 restricted unless it bears the determined markings.

Penalty: 30 penalty units.

(3) If a publication is reclassified under section 39 of the Commonwealth Act, it is sufficient compliance with paragraph (2) (b) for a period of 30 days after the decision to reclassify takes effect if the publication bears the determined markings applicable to the publication before reclassification.

Publications classified Unrestricted

28. A person shall not, without reasonable excuse, sell, deliver or publish a publication classified Unrestricted unless it bears the determined markings.

Penalty: 5 penalty units.

Misleading or deceptive markings

29. (1) A person shall not, without reasonable excuse, publish an unclassified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication has been classified.

Penalty: 30 penalty units.

(2) A person shall not, without reasonable excuse, 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.

Penalty: 30 penalty units.

(3) If a publication is reclassified under section 39 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 bears the determined markings applicable to the publication before reclassification.

Sale of restricted publications to minors

30. (1) A person shall not sell or deliver to a minor a publication classified RC or a submittable publication, unless the person is a parent or guardian of the minor.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person shall 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.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) to prove that—

- (a) that the minor produced to the defendant acceptable proof of age before the defendant sold or delivered the publication to the minor and the defendant believed on reasonable grounds that the minor was an adult;
- (b) that the defendant did not know, and could not reasonably have known, that the publication was classified Category 1 restricted or Category 2 restricted; or
- (c) in the case of a submittable publication—that, since the offence was alleged to have been committed, the publication has been classified Unrestricted.

Leaving publications in certain places

31. (1) A person shall 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;

knowing that it is such a publication.

Penalty:

- (a) in the case of a publication classified Category 1 restricted or Category 2 restricted, or a submittable publication which is subsequently classified Category 1 restricted or Category 2 restricted—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a publication classified RC, or a submittable publication which is subsequently classified RC—100 penalty units or imprisonment for 12 months, or both.

(2) It is a defence to a prosecution for an offence against subsection (1) to prove that—

- (a) since the offence was alleged to have been committed, the publication has been classified Unrestricted;
- (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 subsection 26 (1); 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 shall 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;

knowing that it is such a publication.

Penalty:

- (a) in the case of a publication classified Category 1 restricted or Category 2 restricted, or a submittable publication which is subsequently classified Category 1 restricted or Category 2 restricted—50 penalty units or imprisonment for 6 months, or both;

- (b) in the case of a publication classified RC, or a submittable publication which is subsequently classified RC—100 penalty units or imprisonment for 12 months, or both.

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

Possession or copying of publication for the purpose of publishing

32. (1) A person shall not possess or copy (other than for the purposes of classification or law enforcement)—

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

with the intention of selling the publication or the copy.

Penalty:

- (a) in the case of a submittable publication—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a publication classified RC—100 penalty units or imprisonment for 12 months, or both.

(2) It is a defence to a prosecution for an offence against subsection (1) 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 against this section, evidence that a person made 10 or more copies of an unclassified publication is evidence that the person intended to sell the publication and, in the absence of evidence to the contrary, is proof of that fact.

PART IV—COMPUTER GAMES

Sale or demonstration of computer game in public place

33. (1) A person shall not, without reasonable excuse, sell or demonstrate a computer game in a public place unless the computer game is classified.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person shall not, without reasonable excuse, sell or demonstrate a computer game in a public place unless the computer game—

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

Penalty: 50 penalty units.

Display of notice about classifications

34. A person shall not, without reasonable excuse, sell or demonstrate a computer game in a public place unless a notice in the approved form about classifications for computer games is displayed in a prominent place in that public place so that the notice is clearly visible to the public.

Penalty: 5 penalty units.

RC computer games

35. A person shall not, without reasonable excuse—

- (a) sell; or
- (b) demonstrate in a public place;

a computer game classified RC or an unclassified computer game which is subsequently classified RC.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

MA (15+) computer games

36. A person shall not, without reasonable excuse, demonstrate a computer game classified MA (15+) in a public place unless—

- (a) the determined markings are exhibited before the computer game can be played; and
- (b) entry to the place is restricted to adults, or minors who are in the care of a parent or guardian while in the public place.

Penalty: 20 penalty units.

Demonstration of unclassified, RC and MA (15+) computer games

37. A person shall not, without reasonable excuse, demonstrate any of the following so that it can be seen from a public place:

- (a) an unclassified computer game which is subsequently classified RC or MA (15+);
- (b) a computer game classified RC or MA (15+).

Penalty:

- (a) in the case of a computer game classified RC or an unclassified computer game which is subsequently classified RC —100 penalty units or imprisonment for 12 months, or both;
- (b) in the case of a computer game classified MA (15+) or an unclassified computer game which is subsequently classified MA (15+)—20 penalty units.

Private demonstration of RC computer games in presence of a minor

38. (1) A person shall not demonstrate in a place other than a public place, in the presence of a minor, a computer game classified RC or an unclassified computer game which is subsequently classified RC.

Penalty: 50 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) to prove that—

- (a) the defendant believed on reasonable grounds that the minor was an adult; or
- (b) the defendant was the parent or guardian of the minor.

Computer games to bear determined markings and consumer advice

39. (1) A person shall not, without reasonable excuse, sell a computer game unless the determined markings relevant to the classification of the computer game and relevant consumer advice, if any, are displayed on the container, wrapping or casing of the computer game.

Penalty: 10 penalty units.

(2) A person shall not, without reasonable excuse, sell an unclassified computer game if the container, wrapping or casing in which the computer game is sold bears a marking that indicates or suggests that the computer game has been classified.

Penalty: 30 penalty units.

(3) A person shall not, without reasonable excuse, sell a classified computer game if the container, wrapping or casing in which the computer game is sold bears a marking that indicates or suggests that the computer game is unclassified or has a different classification.

Penalty: 30 penalty units.

(4) If a computer game is reclassified under section 39 of the Commonwealth Act, display of the determined markings and consumer advice applicable to the computer game before classification is sufficient compliance with this section for a period of 30 days after the decision to reclassify takes effect.

Keeping unclassified or RC computer games with other computer games

40. (1) If a person keeps or possesses an unclassified computer game or a computer game classified RC on any premises where classified computer games are sold or demonstrated, the person and the occupier of the premises are each guilty of an offence punishable, on conviction, by a fine not exceeding 100 penalty units or imprisonment for 12 months, or both.

(2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant did not know, or could not reasonably have known, that—

- (a) the computer game was on the premises; or
- (b) the computer game was an unclassified computer game or a computer game classified RC.

Sale or delivery of certain computer games to minors

41. (1) A person shall not, without reasonable excuse, sell or deliver to a minor a computer game classified RC or an unclassified computer game which is subsequently classified RC.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person shall not sell or deliver to a minor who is under 15 years of age a computer game classified MA (15+) or an unclassified computer game which is subsequently classified MA (15+), unless the person is a parent or guardian of the minor.

Penalty: 20 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (2) to prove that—

- (a) the defendant believed on reasonable grounds that—
 - (i) the person was 15 years of age or older; or
 - (ii) the parent or guardian of the minor had consented to the sale or delivery; or
- (b) the defendant did not know, or could not reasonably have known, that—
 - (i) the computer game was classified MA (15+); or
 - (ii) in the case of an unclassified film which is subsequently classified MA (15+)—it would subsequently be so classified.

Leaving computer games in certain places

42. A person shall not, without reasonable excuse, leave in a public place or, without the occupier's permission, on private premises—

- (a) a computer game classified RC or MA (15+); or
- (b) an unclassified computer game which is subsequently classified RC or MA (15+);

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

Penalty:

- (a) in the case of a computer game classified RC or an unclassified computer game which is subsequently classified RC —100 penalty units or imprisonment for 12 months, or both;
- (b) in the case of a computer game classified MA (15+) or an unclassified computer game which is subsequently classified MA (15+)—20 penalty units.

Possession or copying of computer game for the purpose of sale or demonstration

43. (1) A person shall not possess (other than for the purposes of classification or law enforcement)—

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

with the intention of selling or demonstrating the computer game.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person shall not copy (other than for the purposes of classification or law enforcement)—

- (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.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) to prove that since the offence was alleged to have been committed the computer game has been classified MA (15+), M (15+), G (8+) or G.

(4) In proceedings for an offence against this section, evidence that a person made 10 or more copies of an unclassified computer game is evidence that the person intended to sell or demonstrate the computer game and, in the absence of evidence to the contrary, is proof of that fact.

PART V—ADVERTISEMENTS

Certain advertisements not to be published

44. (1) A person shall not, without reasonable excuse, publish an advertisement for a film or publication or computer game—

- (a) if the advertisement has not been submitted for approval under section 29 of the Commonwealth Act and, if submitted, would be refused approval; or
- (b) if the advertisement has been refused approval under section 29 of the Commonwealth Act.

Penalty: 50 penalty units.

(2) A person shall not, without reasonable excuse, publish an advertisement for a film or publication or computer game—

- (a) if the advertisement is approved under section 29 of the Commonwealth Act—in an altered form to the form in which it is approved; or
- (b) if the advertisement is approved under section 29 of the Commonwealth Act subject to conditions—except in accordance with those conditions.

Penalty: 10 penalty units.

Certain publications, films and computer games not to be advertised

45. (1) A person shall not, without reasonable excuse, publish an advertisement for an unclassified film, other than a film in relation to which a certificate of exemption has been granted under section 33 of the Commonwealth Act.

Penalty: 50 penalty units.

(2) A person shall not, without reasonable excuse, publish an advertisement for—

- (a) a film classified RC;
- (b) a submittable publication;
- (c) a publication classified RC;
- (d) an unclassified computer game; or
- (e) a computer game classified RC.

Penalty: 30 penalty units.

(3) 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 shall be taken to have published it.

Screening of advertisements with feature films

46. A person shall not, without reasonable excuse, screen in a public place an advertisement for a film during a program for the exhibition of another film (“the feature film”) unless the feature film has a classification specified in column 2 of an item in the Table and the advertised film has a classification specified opposite it in column 3 of that item.

TABLE

Item	Column 2	Column 3
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Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

	Feature film	Advertised film
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA	MA, M, PG or G
5	R	R, MA, M, PG or G
6	X	X, R, MA, M, PG or G

Penalty: 30 penalty units.

Liability of occupier for certain advertisements

47. The occupier of a public place shall not, without reasonable excuse, screen in the public place—

- (a) an advertisement for a film classified R, unless the advertisement was screened during a program for the exhibition of a film classified X or R;
- (b) an advertisement for a film classified MA, unless the advertisement was screened during a program for the exhibition of a film classified X, R or MA; or
- (c) an advertisement for a film classified X, R or MA, unless the place in which the advertisement was screened was a restricted publications area.

Penalty: 30 penalty units.

Sale of feature films with advertisements

48. A person shall not, without reasonable excuse, sell a film (“the feature film”) that is accompanied by an advertisement for another film unless the feature film has a classification specified in column 2 of an item in the Table and the advertised film has a classification specified opposite it in column 3 of that item.

TABLE

Item	Column 2 Feature film	Column 3 Advertised film
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA	MA, M, PG or G
5	R	R, MA, M, PG or G
6	X	X, R, MA, M, PG or G

Penalty: 30 penalty units.

Advertisements with computer games

49. A person shall not, without reasonable excuse, sell, or demonstrate in a public place, a computer game (“the main game”) that is accompanied by an advertisement for another game unless the main game has a classification specified in column 2 of an item in the Table and the advertised computer game has a classification specified opposite it in column 3 of that item.

TABLE

Item	Column 2 Main game	Column 3 Advertised computer game
1	G	G
2	G (8+)	G (8+) or G
3	M (15+)	M (15+), G (8+) or G
4	MA (15+)	MA (15+), M (15+), G (8+) or G

Penalty: 30 penalty units.

Advertisement to contain determined markings and consumer advice

50. (1) A person shall not, without reasonable excuse, publish an advertisement for a classified film, a classified publication or a 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.

Penalty: 10 penalty units.

(2) If a film, publication or computer game is reclassified under section 39 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.

Misleading or deceptive advertisements

51. (1) A person shall not, without reasonable excuse, publish an advertisement for an unclassified film, an unclassified publication or an unclassified computer game with a marking that indicates or suggests that the film, publication or computer game is classified.

Penalty: 30 penalty units.

(2) A person shall not, without reasonable excuse, 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.

Penalty: 30 penalty units.

(3) If a film, publication or computer game is reclassified under section 39 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.

Advertisements for Category 1 restricted or Category 2 restricted publications

52. (1) A person shall not, without reasonable excuse, publish an advertisement for a publication classified Category 1 restricted except in a publication classified Category 1 restricted, Category 2 restricted or in a restricted publications area.

Penalty: 30 penalty units.

(2) A person shall not, without reasonable excuse, publish an advertisement for a publication classified Category 2 restricted except in a publication classified Category 2 restricted or in a restricted publications area.

Penalty: 30 penalty units.

(3) If an advertisement of a publication classified Category 2 restricted is published in a place other than a restricted publications area, the occupier of the place is guilty of an offence punishable, on conviction, by a fine not exceeding 30 penalty units.

Advertisements and X films

53. (1) If—

- (a) an advertisement for a film classified R is published in a publication; and
- (b) a film classified X is sold to a person responding to the advertisement;

the person who, without reasonable excuse, sells the film is guilty of an offence punishable, on conviction, by a fine not exceeding 50 penalty units or imprisonment for 6 months, or both.

(2) A person shall not, without reasonable excuse, publish an advertisement for a film classified X if the advertisement explicitly depicts or describes sexual acts or fetishes.

Penalty: 30 penalty units.

(3) Subsection (2) does not apply if—

- (a) the advertisement is contained in a sealed package made of plain opaque material bearing the words “WARNING: SEXUALLY EXPLICIT ADVERTISING”, or words to the like effect, prominently displayed on the outside of the package; and
- (b) the package referred to in paragraph (a) is contained in another sealed package made of plain opaque material.

Classification symbols etc. to be published with advertisements

54. A person shall not, without reasonable excuse, publish a publication containing an advertisement for—

- (a) a film;

- (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.

Penalty: 5 penalty units.

PART VI—X FILMS

Division 1—Preliminary

Interpretation

54A. (1) In this Part—

“influential person”, in relation to a body corporate, means—

- (a) a director or secretary of the body; or
- (b) a person who is—
 - (i) substantially concerned in the management of the body;
or
 - (ii) able to control, or to substantially influence, the body’s activities or internal affairs;

“licence” means a licence granted under section 54E;

“Registrar” means the Registrar of X Film Licences under section 54B.

(2) A reference in this Part to an offence against this Act shall be read as including a reference to an offence under Part VIII of the *Crimes Act 1900*.

Division 2—X Film Licences

Registrar of X Film Licences

54B. (1) There shall be a Registrar of X Film Licences.

(2) The Chief Executive shall create and maintain an office in the Public Service the duties of which include performing the functions of the Registrar of X Film Licences.

(3) The Registrar shall be a public servant for the time being performing the duties of the Public Service office referred to in subsection (2).

Application for licence

54C. An application for a licence to sell or copy, or to sell and copy, X films shall—

- (a) be in a form approved by the Registrar; and
- (b) be accompanied by the determined fee.

Further information on licence application

54D. The Registrar may, by written notice, require an applicant for a licence to provide, in writing or orally, such further information relating to the application as is specified in the notice.

Grant or refusal of licence

54E. (1) The Registrar shall, on application in accordance with section 54C—

- (a) grant a licence to sell or copy, or to sell and copy, X films; or
- (b) refuse to grant a licence to sell or copy, or to sell and copy, X films.

(2) The Registrar may impose conditions on the grant of a licence.

(3) The conditions which the Registrar may impose are those which the Registrar believes on reasonable grounds are necessary in the public interest.

(4) For the purposes of making a decision under subsection (1) or (2), the Registrar shall have regard to the following:

- (a) if the applicant is a natural person—whether he or she is an undischarged bankrupt;
- (b) if the applicant is a body corporate—whether it is being wound up;
- (c) whether the applicant has contravened this Act, the *Publications Control Act 1989* or the *Business Franchise (“X” Videos) Act 1990*;
- (d) whether the applicant has been convicted of an offence punishable on conviction—

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- (i) in the case of a natural person—by a fine of not less than 100 penalty units or imprisonment for a period of not less than 1 year; or
 - (ii) in the case of a body corporate—by a fine of not less than 500 penalty units;
- (e) whether the applicant has infringed copyright within the meaning of Part IV of the *Copyright Act 1968* of the Commonwealth in relation to a cinematograph film within the meaning of that Act.

(5) In paragraphs (4) (c) and (d), a reference to an applicant shall be read, where the applicant is a body corporate, as including a reference to any influential person in relation to the body.

(6) If the Registrar refuses to grant a licence, the Registrar shall refund to the applicant an amount equal to the determined fee accompanying the application for the licence.

Form of licence

54F. A licence shall specify—

- (a) the full name and address of the licensee;
- (b) whether the licence is granted in respect of the sale or copying, or the sale and copying, of X films;
- (c) the premises in relation to which the licence is granted; and
- (d) the conditions (if any) to which the licence is subject.

Term of licence

54G. Subject to this Part, a licence remains in force for such period, not exceeding 12 months, as is specified in the licence.

Renewal of licence

54H. (1) A licensee may, at any time before the expiration of the period referred to in section 54G or the last period of renewal, as the case may be, apply to the Registrar for a renewal of the licence.

(2) An application shall—

- (a) be in a form approved by the Registrar; and

(b) be accompanied by the determined fee.

(3) The Registrar shall, on receipt of an application in accordance with subsection (1), renew the licence.

(4) Subject to this Part, a licence renewed under subsection (3) remains in force for a period of 12 months commencing on the expiration of the period referred to in section 54G, or the last period of renewal, as the case requires.

Payment by instalments

54J. (1) Where, under section 54H, the Registrar renews a licence, the licensee may pay the determined fee by instalments.

(2) Instalment payments shall be paid on or before the due date.

(3) Where a person fails to pay an instalment by the due date, the Registrar shall, by notice to the licensee, suspend the licence.

(4) Where a person fails to pay an instalment within 30 days after the due date for the instalment, the Registrar shall cancel the licence.

(5) In this section—

“due date” means 1 February, 1 May, 1 August or 1 November.

Variation of conditions

54K. (1) The Registrar may, by notice in writing served on the licensee, vary the conditions specified in a licence.

(2) A notice under subsection (1) takes effect from the day specified in the notice (being a day not less than 28 days after the date of the notice).

(3) A licensee shall not, without reasonable excuse, fail to submit the licence to the Registrar within 28 days after service of a notice referred to in subsection (1).

Penalty: 20 penalty units.

(4) On receipt of a licence, the Registrar shall amend the licence and return it to the licensee within 7 days.

Change of licensed premises

54L. (1) Subject to subsection (2), a licensee shall before—

(a) selling X films at premises other than those specified in the licence; or

(b) ceasing to sell X films at particular premises specified in the licence; submit the licence to the Registrar together with written notice of the proposed change and the proposed date of the change.

(2) A licensee shall not give notice under subsection (1) less than 28 days before the proposed date of change.

(3) The Registrar shall, within 7 days after receipt of a notice under subsection (1), amend the licence and return it to the licensee.

(4) The amendment of a licence under subsection (3) takes effect on the date specified in the notice under subsection (1).

(5) A licensee shall not, without reasonable excuse, contravene subsection (1).

Penalty: 20 penalty units.

Change of activity under a licence

54M. (1) Where—

- (a) a licensee is authorised under a licence to sell and copy X films; and
- (b) the licensee ceases to sell or copy X films;

the licensee shall, not later than 28 days after he or she ceases to sell or copy X films—

- (c) notify the Registrar in writing of that fact; and
- (d) submit his or her licence to the Registrar.

(2) The Registrar shall, within 7 days after receipt of a notice under subsection (1), amend the licence and return it to the licensee.

(3) A licensee shall not, without reasonable excuse, contravene subsection (1).

Penalty: 20 penalty units.

Cancellation

54N. (1) The Registrar may cancel a licence if the Registrar has reasonable grounds for believing that—

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- (a) the licence was granted in error or in consequence of a false statement made, or misleading information furnished, by the applicant for the licence;
- (b) the licensee has contravened a condition of a licence;
- (c) the licensee has contravened this Act, the *Publications Control Act 1989* or the *Business Franchise ("X" Videos) Act 1990*;
- (d) the licensee has been convicted of an offence—
 - (i) against this Act; or
 - (ii) that is punishable on conviction—
 - (A) in the case of a natural person—by a fine of not less than 100 penalty units or by imprisonment for a period of not less than 1 year; or
 - (B) in the case of a body corporate—by a fine of not less than 500 penalty units;
- (e) if the licensee is a natural person—he or she is an undischarged bankrupt;
- (f) if the licensee is a body corporate—it is being wound up; or
- (g) the licensee has infringed copyright within the meaning of Part IV of the *Copyright Act 1968* of the Commonwealth in relation to a cinematograph film within the meaning of that Act.

(2) In paragraphs (1) (c), (d) and (g), a reference to a licensee shall, where the licensee is a body corporate, be read as including a reference to any defined influential person in relation to the body.

(3) The Registrar shall, before cancelling a licence, by notice in writing served on the licensee, invite the licensee to show cause why the licence should not be cancelled.

(4) A notice shall contain—

- (a) particulars of the facts and circumstances relied on by the Registrar to establish that a ground for cancellation exists; and
- (b) a statement to the effect that the licensee may, within such period as is specified in the notice (being a period of not less than 14 days after the

date the notice is given), give to the Registrar written particulars of the facts and circumstances relied on by the licensee to show that the licence should not be cancelled.

(5) After the expiration of the period specified in a notice under subsection (3), the Registrar may cancel the licence for the reasons referred to in the notice.

(6) In making a decision under subsection (5), the Registrar shall have regard to any explanation provided in accordance with subsection (3) as to why the licence should not be cancelled.

(7) Cancellation of a licence takes effect on the expiration of the day on which notice of the cancellation is given to the licensee under section 54R.

(8) The Registrar shall cancel a licensee's licence on the written request of the licensee.

Surrender

54P. (1) A licensee shall not, without reasonable excuse, within 7 days after ceasing to sell or copy X films, fail to surrender his or her licence.

Penalty: 20 penalty units.

(2) A licence is surrendered by giving written notice of its surrender, and the licence, to the Registrar.

(3) The surrender of a licence takes effect on the date the notice of surrender is given in accordance with subsection (2).

Expiration

54Q. On the expiration of a licence by cancellation or lapse of time, the former licensee shall not, without reasonable excuse, fail to return the licence to the Registrar within 7 days of its expiration.

Penalty: 20 penalty units.

Division 3—Review of decisions

Notice of decisions

54R. (1) This section applies to the following decisions of the Registrar:

- (a) under paragraph 54E (1) (b) to refuse to grant a licence;
- (b) under subsection 54E (2) to grant a licence subject to conditions;

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- (c) under subsection 54K (1) to vary a condition to which the licence is subject;
- (d) under subsection 54N (1) to cancel a licence;
- (e) under subsection 54Y (3) to refuse to approve the extension of the defined period in relation to a seized film;
- (f) under subsection 54Y (3) to approve the extension of the defined period in relation to a seized film for a period less than that applied for by the person from whom the film was seized;
- (g) under subsection 54ZB (1) to destroy a seized film.

(1A) Where the Registrar makes a decision to which this section applies, he or she shall cause notice in writing of the decision to be given to—

- (a) in the case of a decision referred to in paragraph (1) (a) to (f) (inclusive)—the applicant or licensee, as the case requires; or
- (b) in the case of a decision referred to in paragraph (1) (g)—the person from whom the film was seized.

(2) A notice under subsection (1A) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

Review by Administrative Appeals Tribunal

54S. Application may be made to the Administrative Appeals Tribunal for a review of a decision referred to in subsection 54R (1).

Division 4—Enforcement

Interpretation

54T. In this Division—

“X film” includes an unclassified film and a film classified RC.

Inspectors

54U. (1) There shall be 1 or more inspectors for the purposes of this Part.

(2) The Chief Executive shall create and maintain 1 or more offices in the Public Service the duties of which include performing the functions of an inspector.

(3) An inspector shall be a public servant for the time being performing the duties of a Public Service office referred to in subsection (2).

Identity cards

54V. (1) The Chief Executive shall issue to an inspector an identity card specifying the inspector's name and office, and on which appears a recent photograph of the inspector.

(2) On ceasing to occupy, or to act in, the office of the inspector a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty: 1 penalty unit.

Powers of entry, search etc.

54W. (1) For the purposes of this Part an inspector may, without a warrant—

- (a) enter premises to which a licence relates at any reasonable time when those premises are open for business; or
- (b) subject to section 54X, enter any premises at any time with the consent of the occupier of those premises.

(2) An inspector who enters premises under subsection (1), is not authorised to remain on the premises if, on request by or on behalf of the licensee or occupier of the premises, the inspector does not produce his or her identity card.

(3) An inspector who enters premises pursuant to subsection (1) may—

- (a) inspect, make copies of, or take extracts from, any film, or any document or record that the inspector has reasonable grounds for believing to be connected with the sale of X films;
- (b) seize any thing that the inspector has reasonable grounds for believing to be connected with an offence against this Act;
- (c) require any person on the premises to make available any films, or any document or record kept on the premises, to furnish information that the inspector has reasonable grounds for believing is connected with the sale of X films, and to answer questions; and

- (d) require the licensee or occupier to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under this section.

(4) A person shall not, without reasonable excuse, fail to comply with a requirement made of the person under paragraph (3) (c) or (d).

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

Consent to entry and inspection

54X. (1) Before seeking the consent of the licensee or occupier of premises for the purposes of paragraph 54W (1) (b), an inspector shall inform the occupier that he or she may refuse to give that consent.

(2) If an inspector obtains the consent of the licensee or occupier of premises for the purposes of paragraph 54W (1) (b), the inspector shall ask the licensee or occupier to sign a written acknowledgment—

- (a) that the licensee or occupier has given the inspector consent, for the purposes of that paragraph, to enter the premises and to exercise the powers of an inspector under subsection 54W (3);
- (b) that the licensee or occupier has been informed that he or she may refuse to give that consent; and
- (c) specifying the day on which, and the time at which, that consent was given.

(3) Where it is material, in any proceedings, for a court to be satisfied of the consent of an occupier for the purposes of paragraph 54W (1) (b) and an acknowledgment in accordance with subsection (2) is not produced in evidence, it shall be presumed that the occupier did not consent unless the contrary is established.

Division 5—Seized films

Interpretation

54Y. (1) In this Division—

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“defined offence”, in relation to a seized film, means an offence in relation to that film against—

- (a) this Act;
- (b) section 92NB of the *Crimes Act 1900*;
- (c) the *Publications Control Act 1989*; or
- (d) the *Business Franchise (“X” Videos) Act 1990*;

“defined period”, in relation to a seized film, means—

- (a) 120 days after the seizure of the film; or
- (b) such extended, or further extended, period as is approved under subsection (3);

“seized film” means a film seized under section 54W.

(2) For the purposes of this Division, proceedings in relation to a defined offence shall not be taken to be determined until—

- (a) the expiration of any period for lodging an appeal in relation to the proceedings; or
- (b) if any appeal has been lodged in relation to the proceedings—the appeal has been determined, and any period for lodging a further appeal has expired.

(3) For the purposes of this Division, the Registrar may by instrument approve the extension, or further extension, of the defined period in relation to a seized film for such period as he or she considers on reasonable grounds to be necessary or desirable for the purposes of—

- (a) allowing the person from whom the film was seized to satisfy the Registrar on reasonable grounds that the film is classified X, R, MA, M, PG or G; or
- (b) the administration of this Act.

(4) The Registrar may by instrument approve the extension of a defined period under subsection (3)—

- (a) on the written application of the person from whom the relevant film was seized, being an application made before that period would otherwise have expired; or

(b) at any time—on the Registrar’s own motion.

(5) The Registrar shall give a copy of an instrument of extension under paragraph (4) (b) in relation to a seized film to the person from whom the film was seized.

Notice

54Z. (1) This section applies to a seized film if the Registrar is not satisfied on reasonable grounds that the film is classified X, R, MA, M, PG or G.

(2) Where this section applies to a seized film, the Registrar shall give a written notice to the person from whom the film was seized inviting the person to satisfy the Registrar on reasonable grounds within the defined period that the film is classified X, R, MA, M, PG or G.

(3) A notice under subsection (2) shall include a statement to the effect that—

- (a) the seized film may be destroyed unless the person satisfies the Registrar on reasonable grounds that the film is classified X, R, MA, M, PG or G; and
- (b) the person from whom the film was seized may apply to the Registrar under subsection 54Y (4) for the extension, or further extension, of the defined period.

Return of seized films

54ZA. The Registrar shall take reasonable steps to return a seized film to the person from whom it was seized where—

- (a) the Registrar is satisfied on reasonable grounds that the film is classified X, R, MA, M, PG or G;
- (b) either—
 - (i) proceedings in relation to a defined offence have not been instituted at the expiration of the defined period after the date of seizure; or
 - (ii) if such proceedings have been instituted within that period—the proceedings have been determined (whether before or after the expiration of that period) and no offence has been found proved in relation to the film; and

- (c) if the person is a licensee—
 - (i) an invitation under subsection 54N (3) on the ground referred to in paragraph 54N (1) (c) in relation to the film has not been issued to the person at the expiration of the defined period after the date of seizure; or
 - (ii) if such an invitation has been issued within that period— the Registrar has made a decision (whether before or after the expiration of that period) not to cancel the licence on that ground.

Destruction of seized films

54ZB. (1) The Registrar shall destroy a seized film where, following the issue of a notice under subsection 54Z (2)—

- (a) the person from whom the film was seized does not satisfy the Registrar on reasonable grounds, pursuant to the invitation in the notice, that the film is classified X, R, MA, M, PG or G; and
- (b) either—
 - (i) proceedings in relation to a defined offence have not been instituted at the expiration of the defined period after the date of seizure; or
 - (ii) if such proceedings have been instituted within that period—the proceedings have been determined (whether before or after the expiration of that period) and no offence has been found proved in relation to the film.

(2) The Registrar shall destroy a seized film where—

- (a) the person from whom the film was seized is a licensee; and
- (b) the licence is cancelled on the ground referred to in paragraph 54N (1) (c) in relation to the film.

(3) The Registrar shall destroy a seized film where a defined offence in relation to the film is proved.

(4) Despite subsections (1), (2) and (3), the Registrar may retain a seized film for the purposes of the administration of this Act for such period as he or she considers on reasonable grounds to be necessary or desirable for those purposes.

PART VII—EXEMPTIONS

Exemption—publications, films, computer games or advertisements

55. (1) The Minister or Director may, on application, by notice, exempt a film, publication, computer game or advertisement specified in the notice from such of the provisions of this Act as are specified in the notice.

(2) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the notice.

Exemption—approved organisation

56. (1) The Minister or Director may, on application, by notice, exempt an organisation approved under section 57 in relation to the exhibition of a film at an event that is specified in the notice from such of the provisions of this Act as are so specified.

(2) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the notice.

(3) An application shall—

- (a)** be in writing;
- (b)** specify the film which the organisation intends to exhibit and the event at which the film is to be exhibited; and
- (c)** be accompanied by—
 - (i)** a synopsis of the story or events depicted in the film; and
 - (ii)** the determined fee.

Organisations may be approved

57. (1) The Minister may, on application, by notice in the *Gazette*, approve an organisation for the purposes of this Part.

(1A) The Director may, on application, by notice in the *Commonwealth Gazette*, approve an organisation for the purposes of this Part.

(2) In considering whether to approve an organisation, the Minister or Director shall have regard to—

- (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; and
- (d) the conditions as to admission of persons to the screening of films by the organisation.

(3) An approval takes effect on the date of publication of the notice referred to in subsection (1).

(4) Where the Minister or Director has reasonable grounds for believing that it is no longer appropriate that an organisation be approved by reason of a change in any matter referred to in subsection (2), the Minister or Director shall, by notice in writing to the organisation—

- (a) set out the grounds for his or her belief; and
- (b) invite the organisation, within a period specified in the notice, to show cause why the approval should not be revoked.

(5) The Minister or Director may—

- (a) on the expiration of the period referred to in paragraph (4) (b); and
- (b) after taking into consideration any representations made by the organisation;

by notice in writing, revoke the approval.

(6) Revocation of an approval takes effect on the date of the decision to revoke or on a later date specified in a notice under subsection (5).

Ministerial directions and guidelines

57A. In exercising any power under this Part, the Director shall give effect to any directions or guidelines issued by the Minister in relation to the application of this Part.

Notice of decisions

58. (1) Where the Minister or Director makes a decision—

- (a) refusing to exempt—

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- (i) a film, publication, computer game or advertisement under section 55; or
- (ii) an organisation under section 56;
- (b) specifying provisions of this Act from which a film, publication, computer game or advertisement is exempt under section 55;
- (c) specifying provisions of this Act from which an organisation is exempt under section 56;
- (d) specifying conditions subject to which an exemption is given under section 55 or 56;
- (e) refusing to approve an organisation under subsection 57 (1) or (1A); or
- (f) revoking an approval under subsection 57 (5);

the Minister or Director shall give notice in writing of the decision to the applicant.

(2) A notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

Review of decisions

59. Application may be made to the Administrative Appeals Tribunal for a review of a decision referred to in section 58.

PART VIII—MISCELLANEOUS

Corporations—penalties

60. Where a body corporate is convicted of an offence against this Act or the regulations, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

Restricted publications area—construction and management

61. (1) A restricted publications area shall be so constructed that no part of the interior of the area is visible to any person outside the area.

(2) Each entrance to a restricted publications area shall—

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- (a) be fitted with a gate or door capable of excluding persons from the area; and
- (b) be closed by means of that gate or door when the area is not open to the public.

(3) A restricted publications area shall be managed by an adult who shall be in attendance in or near the area at all times when the area is open to the public.

(4) The manager of a restricted publications area shall cause notice in the prescribed form to be displayed in a prominent place on or near each entrance to the area, so that it is clearly visible from outside the area.

Restricted publications area—offences

62. (1) The manager of a restricted publications area shall not, without reasonable excuse, permit a minor to enter that area.

Penalty: 10 penalty units.

(2) The manager of a restricted publications area shall not, without reasonable excuse, exhibit, or cause or permit to be exhibited, in the area a film classified R or X, except by means of a slot-machine operated by a coin or token.

Penalty: 50 penalty units.

Evidence

63. In any proceeding for an offence against this Act, a certificate 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;
- (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, has been refused approval or has not been approved;

is evidence of the matters stated in the certificate.

Commencement of prosecution for an offence

64. (1) A prosecution for an offence against this Act in relation to a film, publication or computer game that is unclassified at the time of the alleged offence—

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- (a) shall not be commenced until the film, publication or computer game has been classified; and
 - (b) may be commenced not later than 12 months after the date on which the film, publication or computer game was classified.
- (2) Paragraph (1) (a) does not apply to a prosecution—
- (a) under subsection 6 (1), section 15 or subsection 19 (1) in relation to an unclassified film; or
 - (b) under subsection 33 (1) or 40 (1) in relation to an unclassified computer game.

Forfeiture of certain publications, films and computer games

64A. (1) Where a person is convicted of an offence in relation to a publication, film or computer game that is classified RC, the court may order that the publication, film or computer game is forfeited to the Territory.

- (2) This section does not apply to a film seized under section 54W.

Publication to prescribed person or body

65. Despite anything to the contrary in this Act, a person may publish to a prescribed person or body, or to a person or body in a prescribed class of persons or bodies—

- (a) a film or computer game classified RC, X, R or MA;
- (b) a publication classified Category 1 restricted, Category 2 restricted or RC; or
- (c) a submittable publication.

Conduct of directors, servants and agents

66. (1) Where, for the purposes of a prosecution for an offence against this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

Power of Minister to determine fees

67. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

Regulations

68. The Executive may make regulations for the purposes of this Act.

Repeal

69. The following Acts are repealed:

Film Classification Act 1971;

Film Classification Act 1972;

Film Classification Act 1974;

Film Classification (Amendment) Act 1985;

Film Classification (Amendment) Act 1989;

Film Classification (Amendment) Act 1991;

Film Classification (Amendment) Act 1993;

Publications Control Act 1989;

Publications Control (Amendment) Act 1990;

Publications Control (Amendment) Act 1991;

Publications Control (Amendment) Act 1993;

Publications Control (Amendment) Act 1994.

Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

NOTES

1. The *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* as shown in this reprint comprises Act No. 47, 1995 amended as indicated in the Tables below.
2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Classification (Publications, Films and Computer Games) (Enforcement) Act 1995</i>	47, 1995	18 Dec 1995	Ss. 1 and 2: 18 Dec 1995 Remainder: 1 Jan 1996 (see s. 2 (2) (a) and <i>C'wealth Gazette</i> 1995, No. GN50, p. 4630)	
<i>Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 1996</i>	46, 1996	19 Sept 1996	19 Sept 1996	—
<i>Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act (No. 2) 1996</i>	77, 1996	20 Dec 1996	Ss. 1-3: 20 Dec 1996 Ss. 4-18: 1 Jan 1997 (see <i>Gazette</i> 1996, No. S349) Remainder: 8 Jan 1997 (see <i>Gazette</i> 1997, No. S2)	Ss. 12-19
<i>Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 1997</i>	108, 1997	24 Dec 1997	24 Dec 1997	—

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 3.....	am. Nos. 46 and 77, 1996
S. 20.....	am. No. 77, 1996
S. 24.....	am. No. 77, 1996; No. 108, 1997
S. 45.....	am. No. 46, 1996
Part VI (ss. 54A-54Y).....	ad. No. 77, 1996
Ss. 54A-54Q.....	ad. No. 77, 1996
S. 54R.....	ad. No. 77, 1996 am. No. 108, 1997
Ss. 54S-54V.....	ad. No. 77, 1996
S. 54Y.....	ad. No. 77, 1996 rep. No. 107, 1997
Div. 5 of Part VI (ss. 54Y, 54Z, 54ZA, 54ZB)	ad. No. 107, 1997
S. 54Y.....	rs. No. 107, 1997
Ss. 54Z, 54ZA, 54ZB.....	ad. No. 107, 1997
Ss. 55-57.....	am. No. 46, 1996
S. 57A.....	ad. No. 46, 1996
S. 58.....	am. No. 46, 1996
S. 64.....	am. No. 77, 1996
S. 64A.....	ad. No. 77, 1996 am. No. 107, 1997

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