

1995

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
(ENFORCEMENT) BILL 1995**

EXPLANATORY MEMORANDUM

Circulated by authority of

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**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
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The Classification (Publications, Films and Computer Games) (Enforcement) Bill 1995 ("the Bill") will, when enacted, replace the *Publications Control Act 1989* and the *Film Classification Act 1971*. The Bill has been prepared as part of an agreement between the Commonwealth, States and Territories to take a more cooperative approach to censorship.

In 1990, the Commonwealth Attorney-General asked the Australian Law Reform Commission (ALRC), with the concurrence of the State and Territory governments, to report on how the Commonwealth, State and Territory laws relating to censorship could be simplified and made more uniform and efficient while still giving effect to policy agreed between the various jurisdictions. The ALRC delivered its Report entitled "Censorship Procedure" in June 1991 recommending the rationalisation of present legislation into a national legislative scheme consisting of:

- a federal Act detailing procedures for classifying films and publications;
- a code, agreed to by the Commonwealth, States and Northern Territory [and the Australian Capital Territory, which is a full partner in the new scheme], containing the criteria for classification; and
- State and Territory laws adopting the classifications made under the federal Act and restricting the dissemination of films and publications.

The *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth ("the Commonwealth Act") was debated and passed earlier this year. This Act was prepared, in consultation with the States and Territories, following the recommendations of the ALRC and it is the Commonwealth's contribution to revising the current censorship laws in co-operation with the States and Territories. The Commonwealth Act will replace the *ACT Classification of Publications Ordinance 1983* when commenced.

The purpose of the Commonwealth Act is to provide for the classification of publications, films and computer games for the Australian Capital Territory. The Act is also intended to form part of a Commonwealth/ State/ Territory scheme for the classification of publications, films and computer games and for the enforcement of those classifications.

The Commonwealth Act establishes the Classification Board and the Classification Review Board and sets out the procedures for classification of publications, films and computer games.

The Commonwealth Act will not be brought into force until complementary State and Territory legislation is enacted. The State and Territory legislation will, in effect, govern the submission of films, publications and computer games to the Classification Board for classification. It will also deal with the consequences of the different classifications given by the Board to films, publications and computer games.

The Bill has been prepared as the Australian Capital Territory's contribution to the new national classification scheme. The Bill provides for:

- controls on the exhibition of films consistently with their classification;
- restrictions and conditions on the sale of films;
- restrictions and conditions on the sale of certain publications;
- restrictions and conditions on the sale of computer games; and
- controls on the way in which publications, films and computer games may be advertised.

These matters are currently covered by the *Publications Control Act 1989* and the *Film Classification Act 1971* however the Bill consolidates the matters that are covered by those two Acts into the one comprehensive piece of legislation. The manner in which these matters are provided for is slightly different from the

current legislation in line with the ALRC "Censorship Procedure" Report and in order to ensure consistency with other State and Territory legislation.

The classification system

Publications, films and computer games are classified by the Classification Board under the Commonwealth Act. The Classification Board classifies films, publications and computer games in accordance with the National Classification Code and the classification guidelines under the Commonwealth Act. The National Classification Code, as contained in the Schedule to the Commonwealth Act, is included at the end of this Explanatory Memorandum. The National Classification Code and the classification guidelines and any amendments thereto, while they are made under the Commonwealth Act, are agreed to by the Commonwealth, State and Territory Ministers with responsibility for censorship matters.

The Classification Board may make the following classifications:

Publications	Films	Computer Games
Unrestricted	G (General)	G (General)
Category 1 restricted	PG (Parental Guidance)	G(8+) (General)
Category 2 restricted	M (Mature)	M(15+) (Mature)
RC (Refused Classification)	MA (Mature Accompanied)	MA(15+) (Mature Restricted)
	R (Restricted)	RC (Refused Classification)
	X (Restricted)	
	RC (Refused Classification)	

The Bill provides for the enforcement of these classification decisions. The Unrestricted classification for publications, the G, PG and M classification for films, and the G, G(8+) and M(15+) classification for computer games are all advisory classifications. The Category 1 restricted, Category 2 restricted and RC classification

for publications, the MA, R, X and RC classification for films, and the MA(15+) and RC classification for computer games are all legally restrictive classifications.

Under the classification system, a publication, film or computer game is not required to be classified unless it is intended to be exhibited, sold, published or otherwise disseminated in some way. Publications, however, are not required to be classified unless they are a "submittable publication", that is, a publication that contains depictions or descriptions of sexual matters, drugs, nudity or violence that are likely to cause offence to a reasonable adult to the extent that the publication should not be sold as an unrestricted publication.

Regardless of the possible classification, the simple possession of an unclassified film, computer game or submittable publication is not in itself an offence under the Bill but it should be noted that under section 92NB of the *Crimes Act 1900* the possession of child pornography is an offence punishable by 5 years imprisonment.

Private use of unclassified material is permissible under the Bill except where the unclassified material would, if classified, attract an RC, X, R, MA etc classification and it is shown or given to a minor. The Bill refers, in this context, to an unclassified film, (or publication or computer game as necessary), which is *subsequently classified* RC, X, R, MA etc.

Financial considerations

Under current arrangements, fees for classification are levied under State and Territory legislation, collected by the Commonwealth, and shared equally between the Commonwealth, the States and the Northern Territory. The Australian Capital Territory currently receives none of this classification revenue.

Under the new national censorship scheme the Commonwealth will levy classification fees. In return for the States and Territories foregoing their fee powers, and in recognition of the costs to the States and Territories of enforcing classification

decisions, section 90 of the Commonwealth Act provides that the Commonwealth Minister may enter into an agreement with a participating Minister under which amounts are to be paid to the participating Minister's State or Territory in respect of the administration by the State or Territory of the new national censorship scheme.

The Bill is part of the Australian Capital Territory's commitment to the new national scheme and it is expected that the Territory will receive \$75, 000 per annum indexed to the CPI for its participation.

Details of the Bill are as follows.

PART I - PRELIMINARY

Clause 1 is a formal clause and provides that the Act may be cited as the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* when enacted.

Clause 2 links the commencement of the Act to the commencement of the Commonwealth Act. This is due to the complementary nature of the Commonwealth and Territory legislation. The latest day on which the Commonwealth Act will commence is 15 March 1996 (being 12 months after the day on which the Commonwealth Act received the Royal Assent).

Clause 3 contains definitions of various terms used in the Bill. A number of terms are defined by reference to the Commonwealth Act. The relevant definitions from the Commonwealth Act are as follows:

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

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

(c) advertising on an item of clothing advertising the publication, film or game;

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

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

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

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

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

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

“publish” includes sell, offer for sale, let on hire, exhibit, display, distribute and demonstrate;

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

Clause 4 is also a definitional provision. This clause provides that both the person who conducts the exhibition of a film in a public place and the person with management responsibility of the public place in which the film is exhibited are

taken to exhibit a film in a public place for the purposes of the Act. The intention of this provision is that both persons take responsibility for the manner in which films are exhibited in those places.

Clause 5 provides that the Act does not apply to broadcasting services to which the *Broadcasting Services Act 1992* applies. The *Broadcasting Services Act 1992* contains its own regulatory provisions in relation to such services.

PART II - FILMS

This Part has three divisions dealing with exhibition of films, sale of films and miscellaneous matters. Division 1, Exhibition of Films, provides for controls on the way in which restricted films are exhibited, mainly in relation to public places but also in relation to exhibitions on private premises where a minor is present. Division 1 also requires certain classification information to be displayed when a film is exhibited. Division 2, Sale of Films, restricts the manner in which films may be sold and to whom they may be sold. Similarly to Division 1, Division 2 sets out requirements for the display of classification information. Both Divisions 1 and 2 should be read in conjunction with *clauses 61 and 62* in relation to X classified films. Division 3, Miscellaneous, contains provisions for the police to demand a person's name, age and address in certain circumstances, provisions related to leaving restricted films in certain places, and possessing or copying films for the purpose of sale or exhibition.

Division 1 - Exhibition of Films

Clause 6 provides that a film that is exhibited in a public place must comply with three basic requirements:

- (i) it must be classified under the Commonwealth Act;
 - (ii) it must be exhibited with the same title as that under which it is classified;
- and

(iii) it must not contain any alterations or additions to the form in which it was classified.

A public place is defined in *clause 3* as 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. This would include, for example, a cinema. There are other requirements for the exhibition of films in public places. These further requirements relate to the particular classification given to the film and are set out in the succeeding clauses to this Division.

Clause 7 requires a notice about classifications to be displayed in any public place where films are exhibited. This notice will explain the relevance of the various classifications given to films thereby ensuring that the public is able to make an informed choice before viewing a film that is exhibited in that place.

Clause 8 provides that it is an offence to exhibit an RC classified film in a public place. It is also an offence to exhibit an X classified film in a public place unless it is a restricted publications area located in a prescribed area. A restricted publications area is an area which is only accessible to adults. *Clause 61* sets out the requirements for the construction and management of a restricted publications area. It is intended that the requirements for restricted publications areas to be located in a prescribed area will be carried over from the existing arrangements in the Publications Control Regulations. That is, restricted publications areas may only be located in Fyshwick, Mitchell and Hume.

Clause 9 provides that it is an offence to show an unclassified film which is subsequently classified RC, X, R or MA or a film classified RC, X, R or MA ("an RC, X, R or MA film") so that it can be seen from a public place. Under this section it would be an offence to exhibit one of these types of films where the film could be seen by a passer-by for example, through an open window. This provision could apply equally to films that are exhibited in a public place, like a restricted publications area, and films that are exhibited on private premises. The intention of the section is to ensure that restricted films stay restricted.

Clause 10 places an obligation on parents and guardians not to permit minors to attend the screening of an RC, X or R film in a public place. The parent or guardian must know that the film is an RC, X or R film and know that it is to be exhibited in a public place in order for the offence to be established.

Clause 11 places responsibility on minors who are 15 years of age or older not to attend the exhibition in a public place of a film that is legally restricted to adults. This offence is a new offence. There is no equivalent provision in the *Publications Control Act 1989* or the *Film Classification Act 1971*. The offence is included in the Bill pursuant to a recommendation of the ALRC in its "Censorship Procedure" Report. The ALRC Report noted at 5.8 that "[t]he main responsibility for ensuring that children do not gain access to inappropriate material should rest with the supplier of the material. It is desirable, however, that older children carry some responsibility. As it is unlikely that children under the age of 15 will be able to gain access to this material, the Commission has concluded that 15 years is an appropriate balance between those considerations and recommends that only children over 15 be held liable. These offences should not be ones of strict liability - the prosecution should have to prove knowledge on the part of the defendant child." This clause is intended to give effect to that recommendation. The offence is structured so that the prosecution would have to prove knowledge on the part of the defendant child and the penalty has been set at a low level of 5 penalty units. A similar offence in relation to minors buying restricted films is included at *subclause 21(4)*.

Clause 12 provides that it is an offence to screen a RC, X or R film in a private place in the presence of a minor. As noted in the explanatory material on the classification system at the beginning of this Explanatory Memorandum, the exhibition of a an unclassified film which is subsequently classified RC, X or R in a private place is not in itself an offence. What makes this activity an offence is the presence of a minor at the exhibition of the film. It is a defence to prosecution for an

offence under this clause that the defendant was a parent or guardian of the minor or that the defendant believed on reasonable grounds that the minor was an adult.

Clause 13 provides that it is an offence to exhibit a film classified R in a public place if a minor is present during any part of the exhibition. It is a defence that the minor produced acceptable proof of age or that the defendant believed on reasonable grounds that the minor was an adult. "Acceptable proof of age" is defined in *clause 3* to mean documentary evidence that might reasonably be accepted as applying to the person and as showing that the person is an adult. This would include for example, a driver's licence or a passport.

Clause 14 provides that it is an offence to exhibit a film classified MA in a public place if a minor under the age of 15 years of age is present and the minor is not accompanied by a parent or guardian. Similarly to *clause 13*, specific defences relating to the belief of the defendant that the minor was 15 years of age or over or that the minor was accompanied by a parent or guardian. It is also a defence that the defendant took reasonable steps to avoid contravening this clause.

Division 2 - Sale of Films

Clause 15 is complementary to *clause 6* in providing that a film must be classified before it may be sold. It is also an offence to sell a film classified RC. "Sell" is defined in *clause 3* as meaning "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". The most common form of selling film would be the hire of films in videotape format.

Clause 16 is also complementary to *clause 6* in providing for the sale of a film under the same title as that under which it was classified and without alteration or addition.

Clause 17 requires a notice about classifications to be displayed in any place where films are sold. This clause is very similar to *clause 7* and is intended to ensure that persons buying or hiring the film are able to make an informed choice based on the classification information.

Clause 18 sets out the requirements that films must meet before they are sold. There are three requirements.

- (i) A person must not sell a film unless it bears the determined markings and relevant consumer advice. For example:

RECOMMENDED FOR MATURE AUDIENCES

M15+ 15 YEARS AND OVER.

MEDIUM LEVEL COARSE LANGUAGE

- (ii) A person must not sell a film which is unclassified if the container, wrapping etc, in which it is sold indicates that the film is classified. This labelling offence is in addition to the offence of selling an unclassified film in *clause 15*.

- (iii) Similarly a person may not sell a film that is classified in a container, wrapping etc that indicates that it is unclassified or differently classified.

Subclause 18(4) allows 30 days for persons who sell a film that is reclassified to change the relevant classification advice on that reclassified film. Under section 39 of the Commonwealth Act, the Classification Board may reclassify a film after 2 years after the original classification decision was made either of its own motion or at the request of the Commonwealth Minister. A film may also be reclassified before the 2 years if it becomes declassified because it has been modified.

Clause 19 provides that it is an offence to keep an unclassified film, or a film classified RC, on premises where classified films are sold. This provision is consistent with the prohibition on selling unclassified and RC classified films.

Clause 20 restricts the sale of X classified films to restricted publications areas. A film classified X may also only be sold to a person who has made a direct request for the film and the film must be contained in a package made of opaque material. These requirements carry over existing arrangements for the sale of X classified films from the *Publications Control Act 1989*.

Clause 21 provides that it is an offence to sell or deliver an RC film to a minor. The clause also provides that it is an offence to deliver an X or R film to a minor, or an MA film to a person under 15 years of age, unless the person is a parent or guardian of the minor. There are several specific defences available against the latter offences. Similarly to *clause 11*, subclause 21(4) provides that it is an offence for a minor who is 15 years of age or older to buy a film classified X or R.

Division 3 - Miscellaneous

Clause 22 provides a specific power to demand a person's name, age and address where the police officer believes that a person has contravened, or is about to contravene one of the offence provisions relating to minors who are 15 years of age or older gaining access to restricted films. In the case of offences that do not involve the specific age of the offender, the general power to demand name and address in section 349V of the *Crimes Act 1900* would be relied upon by the police in enforcing the Act.

Clause 23 provides that it is an offence to leave an RC, X, R or MA film in a public place or, without the occupier's permission, on private premises. This provision is intended to ensure that the controls on restricted films are not circumvented through omission. That is, in leaving an R classified film in a public place, a person would not know that the film will come into the possession of a minor however this would be one possible outcome.

Clause 24 provides that it is an offence to possess or copy an unclassified film or a film classified RC with the intention of selling or exhibiting the film. This provision also contains a deeming provision so that evidence that a person has made 10 or more copies of a film is evidence that the person intended to sell or exhibit the film. It is a defence, in respect of unclassified films, that the film is subsequently classified other than RC. That is, it is subsequently classified as suitable for distribution.

PART III - PUBLICATIONS

This Part provides controls on the manner in which certain publications may be sold or delivered. Not all publications are required to be classified before they are disseminated. The majority of publications do not contain material which would be regarded by most people as offensive and would, if classified, be classified as Unrestricted.

Only those publications "that, having regard to the Code and the classification guidelines to the extent that they relate to publications, contains depictions or descriptions of sexual matters, drugs, nudity or violence that are likely to cause offence to a reasonable adult to the extent that the publication should not be sold as an unrestricted publication" are required to be classified (from the definition of "submittable publication"). This manner of dealing with the classification of publications is different from the current arrangements under the *Publications Control Act 1989*. Under the current Act, it is a defence to prosecution for an offence in relation to an unclassified objectionable publication if the defendant establishes that since the offence was committed:

- (i) the publication has been classified; and
- (ii) the act alleged to constitute the offence did not infringe any of the conditions applicable to the sale etc. of that category of restricted publication (other than

display of the determined markings) that would have been applicable to the publication had it been classified at the time of the offence.

In order to provide more certainty for both distributors of these types of publications and for enforcement authorities, this current scheme is replaced under the new national censorship scheme, with the partially compulsory scheme of "submittable publications" as recommended by the ALRC in its "Censorship Procedure" Report. Under this scheme all publications that would fall within the Category 1 restricted classification and Category 2 restricted classification must be classified as well as those publications that straddle the Category 1 restricted classification and the upper end of the Unrestricted classification.

Clause 25 provides that it is an offence to sell or deliver a submittable publication or a publication classified RC. It is a defence that the submittable publication is subsequently classified as Unrestricted, that is, it is suitable for distribution to all persons.

Clause 26 sets out the manner in which Category 1 restricted publications may be sold or delivered. Category 1 restricted publications must be contained in a sealed package and bear the relevant determined markings. These requirements are carried over from the current *Publications Control Act 1989*. Similarly to the rules relating to the display of determined markings on films following reclassification, this clause allows up to 30 days after a publication is reclassified to change the relevant classification advice on that reclassified publication.

Clause 27 sets out the manner in which Category 2 restricted publications may be sold or delivered. Similar to the requirements for the sale of X classified films, Category 2 restricted publications may only be displayed in a restricted publications area and may only be delivered to a person who has made a direct request for the publication. Again, requirements for the display of determined markings and delivery in a package made of opaque material are carried over from the current *Publications Control Act 1989*.

Clause 28 provides that it is an offence to sell, deliver or publish a publication that is classified as Unrestricted unless it bears the determined markings. The display of determined markings on Unrestricted publications is more for information purposes (as the publication may be distributed to anyone) and hence the penalty has been set at a low level.

Clause 29 provides that it is an offence to publish a publication with deceptive or misleading markings that indicate or suggest that the publication has been classified or has a different classification etc.

Clause 30 provides that it is an offence for a person to deliver a restricted publication to a minor unless the person is a parent or guardian of the minor. Again, it is a defence to prosecution for this offence that the minor produced acceptable proof of age, that the defendant did not know that the publication was a restricted publication, or, in the case of a submittable publication, that the publication has since been classified as Unrestricted.

Clause 31 provides that it is an offence to leave a submittable publication, a Category 1 restricted, Category 2 restricted or RC publication in a public place or to display such a publication so that it is visible from a public place. This clause carries over the existing defences from the *Publications Control Act 1989* that the publication has since been classified Unrestricted or, in respect of a Category 1 restricted publication, that the publication and packaging complied with the packaging requirements for that classification. It is also a defence, in respect of Category 2 restricted publications, that the defendant believed on reasonable grounds that the public place was a restricted publications area. The clause also provides that it is also an offence to leave these types of publications on private premises without the permission of the occupier. Similar to the equivalent provisions in relation to films in *clause 23*, these provisions are intended to ensure that the controls on restricted publications are not circumvented through omission.

Clause 32 provides that it is an offence to possess or copy a submittable publication or a publication classified RC with the intention of selling the publication. This provision contains a deeming provision so that evidence that a person has made 10 or more copies of a publication is evidence that the person intended to sell the publication. The provision also contains a defence, in respect of submittable publications, that the publication is subsequently classified other than RC. That is, it is subsequently classified as suitable for distribution.

PART IV - COMPUTER GAMES

This Part provides for controls on the sale and demonstration of computer games. The treatment of computer games for classification purposes is very similar to the treatment of film. All computer games must be classified if they are to be publicly disseminated. The main differences between the treatment of computer games and films is that the upper end of the classification system for computer games under the Commonwealth Act cuts out at MA(15+). If a game is unsuitable for a minor to see or play, it will be refused classification. That is, there are no computer games that are classified so as to be restricted to adults only such as with the R and X classifications for film. Other than this, similar restrictions apply to computer games as apply to films.

Clause 33 provides that it is an offence to sell or demonstrate an unclassified computer game in a public place. "Demonstrate" is defined in *clause 3* of the Bill as including "exhibit, display, screen or make available for playing". "Demonstrate" would include for example, making computer games available for play in a games arcade. *Clause 33* also provides that a computer game must be sold under the same title as the title under which it was classified and without alteration or addition.

Clause 34 requires a notice about classifications to be displayed in any place where computer games are sold or demonstrated. This clause is very similar to *clauses 7*

and 17 and is intended to ensure that persons buying or hiring a computer game are able to make an informed choice based on the classification information.

Clause 35 provides that it is an offence to sell or demonstrate an RC computer game in a public place.

Clause 36 provides that it is an offence to demonstrate a computer game that is classified MA(15+) in a public place unless the determined markings are demonstrated before the computer game is played and entry to the place is restricted to adults and minors who are accompanied by a parent or guardian.

Clause 37 restricts the demonstration of restricted RC and MA(15+) computer games so that they can be seen from a public place. The intention of this clause is to ensure that restricted computer games stay restricted. Under this section it would be an offence to demonstrate an RC or MA(15+) computer game in a games arcade where the game could be seen by a passer-by for example, through a glass shop window. Like *clause 9* this provision could apply equally to computer games that are demonstrated in public places and computer games that are demonstrated on private premises.

Clause 38 provides that it is an offence to demonstrate an RC computer game in a private place in the presence of a minor. As noted in the explanatory material on the classification system at the beginning of this Explanatory Memorandum, the use of RC material in a private place is not in itself an offence. What makes this activity an offence is the presence of a minor. It is a defence to prosecution for an offence under this clause that the defendant was a parent or guardian of the minor or that the defendant believed that the minor was an adult.

Clause 39 sets out requirements in respect of classification information for the sale of computer games. There are three requirements that are aimed at ensuring correct information on classification is provided as follows:

- (i) A person must not sell a computer game unless it bears the determined markings and relevant consumer advice. For example:

**G 8+ SUITABLE FOR CHILDREN 8 YEARS AND OVER.
LOW LEVEL ANIMATED VIOLENCE**

- (ii) A person must not sell a computer game which is unclassified if the container, wrapping etc, in which it is sold indicates that the computer is classified. This labelling offence is in addition to the offence of selling an unclassified computer game in *clause 33*.

- (iii) A person may not sell a computer game that is classified in a container, wrapping etc that indicates that it is unclassified or differently classified.

Similarly to the rules relating to the display of determined markings on films and publications following reclassification, this clause allows up to 30 days after a computer game is reclassified to change the relevant classification advice on that reclassified computer game.

Clause 40 provides that it is an offence to keep an unclassified computer game or a computer game classified RC on premises where classified computer games are sold. This provision is consistent with the prohibition on selling unclassified and RC classified computer games.

Clause 41 provides that it is an offence to sell or deliver an RC computer game to a minor. The clause also provides that it is an offence for a person to deliver an MA computer game to a minor under 15 years of age, unless the person is a parent or guardian of the minor. There are several specific defences available against the latter offence.

Clause 42 provides that it is an offence to leave an RC or MA(15+) computer game in a public place or, without the occupier's permission, on private premises. This

provision is intended to ensure that the controls on restricted computer games are not circumvented through omission.

Clause 43 provides that it is an offence to possess or copy an unclassified computer game or a computer game classified RC with the intention of selling or demonstrating the computer game. This provision contains a deeming provision so that evidence that a person has made 10 or more copies of a computer game is evidence that the person intended to sell or demonstrate the computer game. Similar to the equivalent offence provisions in relation to films and publications, the provision also contains a defence, in respect of unclassified computer games, that the computer game is subsequently classified other than RC. That is, it is subsequently classified as suitable for distribution.

PART V - ADVERTISEMENTS

This Part regulates advertising material for publications, films and computer games. The Part regulates both the content of advertising and the manner in which it may be displayed or disseminated.

The approval of advertisements for publications, films and computer games is a function of the Classification Board under the Commonwealth Act. The submission of advertising material for approval is not compulsory however the Director of the Classification Board may call in an advertisement for a publication, film or computer game for consideration by the Board. The Classification Board is required to consider similar matters when deciding whether to approve an advertisement as it is required to consider when classifying a publication, film or computer game. The approval of an advertisement may be subject to conditions.

Clause 44 provides that it is an offence to publish an advertisement for a film, publication or computer game that has been refused approval by the Classification Board or would be refused approval if it were submitted. It is also an offence to publish an advertisement that has been approved by the Classification Board in an

altered form to the form in which it was approved or otherwise than in accordance with the conditions subject to which it was approved.

Clause 45 prohibits the publication of advertisements for unclassified or RC classified films, publications and computer games. The exception to this rule is in the case of an unclassified film in relation to which a certificate of exemption has been granted under section 33 of the Commonwealth Act. Section 33 of the Commonwealth Act allows the Classification Board to issue a certificate of exemption for a film for advertising purposes and serves the same purpose as section 17D of the current *Publications Control Act 1989*. Exemptions given under this section would allow pre-release advertising of a film, for example, where the film itself would not be available to be classified until a later date.

Clause 46 provides that it is an offence to screen an advertisement for a film in conjunction with the exhibition of another film where the advertised film is of a higher classification than the film that is being exhibited. The intention of the clause is to ensure that a person who makes a choice about the feature film that they wish to see based on the film's classification is not exposed to advertising for a film of a higher classification which they may not wish to see. For example, it may not be appropriate for an audience of young children at the exhibition of a G classified film to be subjected to an advertisement for a violent R classified film.

Clause 47 prohibits advertisements for restricted films being screened in a public place without a feature film being exhibited at the same time (so that it is not caught by the requirements of *clause 46*). Where the advertisement for a restricted film is screened in a restricted publications area it may be screened independently of any feature film as the potential viewers of the advertisement are already restricted, by the entry requirements for a restricted publications area, to persons 18 years of age or above. The purpose of this clause is to restrict the potential viewing audience for the advertisements for restricted films to the same potential audience that may legally view the actual film.

Clause 48 is similar to *clause 46* and prohibits the sale of feature films with advertisements for other films unless the advertised film is of the same or a lower classification.

Clause 49 applies the same principles as are contained in *clauses 46, 47 and 48* to computer games. It is an offence under this clause to sell or demonstrate a computer game which contains an advertisement for another computer game unless the advertised game is of the same, or lower, classification than the main game.

Clause 50 provides that advertisements for classified films, publications and computer games must contain the same determined markings and consumer advice as the film, publication or computer game itself. Again, these requirements are included so that consumers may make an informed decisions taking into account the classification of the relevant film, publication or computer game. A decision to attend the exhibition of a particular film for example, would most likely be based on the advertising material and it would be anomalous if a person did not have access to the relevant classification information until they were actually in the cinema.

Clause 51 carries over the requirements for correct classification information to be displayed in relation to a film, publication or computer game (*clauses 18, 29 and 39*) to the advertisements for the film, publication or computer game.

Clause 52 serves a similar purpose to *clauses 46, 47, 48 and 49* in providing that advertisements for Category 1 restricted and Category 2 restricted publications may only be published in publications of the same or higher classification or in a restricted publications area. Both of these requirements are intended to limit advertisements for these publications to persons who will not be offended by them.

Clause 53 specifies special requirements for the advertising of films that are classified X. This carries over requirements for advertising material for X classified films from the existing *Publications Control Act 1989* with an additional requirement that it is

an offence to sell a film classified X to a person responding to an advertisement for a film classified R. The provision concerning the supply of X classified films in conjunction with advertisements for R classified films is to prevent circumvention of interstate laws prohibiting the publishing of advertisements for films classified X. Under current law a person may submit for classification a modified version of an X classified film under the same title as the X film. The film is modified so that it falls within the R classification and may be advertised interstate - New South Wales law, for example, prohibits the publishing of advertisements for films classified X. The X classified film is then sold to persons responding the advertisement for the R classification version of the film. *Subclauses 53(2) and (3)* carry over existing arrangements ensuring that sexually explicit advertising material is appropriately packaged and contains appropriate warnings.

Clause 54 is similar to *clauses 7, 17 and 34* and carries over requirements for display of classification information to publications, such as newspapers, that contain advertisements for films, restricted publications or computer games.

PART VII - EXEMPTIONS

This Part provides for the Minister to exempt persons, or a particular film, publication or computer game from the provisions of the Act. Appropriate appeal mechanisms are also provided.

Clause 55 provides that the Minister may exempt a film, publication, computer game or advertisement from provisions of the Act. The exemption may be from all or any specified provisions of the Act.

Clause 56 provides that the Minister may exempt an approved organisation in relation to the exhibition of a film at a particular event. This provision could be used, for example, to permit the screening of an unclassified film at a film festival.

Clause 57 provides for the approval of organisations for the purposes of *clause 56*. The clause also sets out a process for revoking the approval of an organisation.

Clause 58 is a standard provision for the giving of notice of decisions made under *clauses 55, 56 and 57*. This clause should be read in conjunction with *clause 59*.

Clause 59 provides that the decisions of the Minister made under the Part may be reviewed by the Administrative Appeals Tribunal.

PART VIII - MISCELLANEOUS

Clause 60 provides that the maximum penalty for a body corporate convicted of an offence under the Act is five times the penalty specified in the Act. This provision recognises that a corporation has more potential gains to be balanced against potential loss for non compliance.

Clause 61 carries over requirements from the existing Publications Control Regulations for the construction and management of restricted publications areas. These requirements are designed to ensure that access to restricted areas is controlled and the persons entering the area are made aware of the sexually explicit nature of material contained therein.

Clause 62 also carries over existing provisions from the *Publications Control Act 1989* in relation to restricting access by minors to restricted publications areas and the display of films by slot-machine.

Clause 63 is a standard evidentiary provision which allows certain evidence from the Director and Deputy Director of the Classification Board to be given by way of evidentiary certificate.

Clause 64 provides that before any prosecution for an offence in relation to an unclassified film, publication or computer game may commence, the film,

publication or computer game must be classified. Prosecution must also be commenced not later than 12 months after the date on which the film, publication or computer game was classified.

Clause 65 provides a further mechanism for exemption from the provisions of the Act. Under this provision, the publication of restricted films, computer games or publications to a particular prescribed person or a particular prescribed class of persons may be exempt from the provisions of the Act. Circumstances in which this provision might be used could include, for example, a trade fair for restricted material. The prescribed class of persons in this example would be persons to whom entry was granted.

Clause 66 is a standard evidentiary provision to establish the actions or state of mind where a person or body corporate acts through a director, servant or agent.

Clause 67 allows the Minister to determine fees for the purposes of the Act.

Clause 68 provides that the Executive may make Regulations for the purposes of the Act.

Clause 69 provides for the repeal of the *Film Classification Act 1971* and the *Publications Control Act 1989*.

NATIONAL CLASSIFICATION CODE

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

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

PUBLICATIONS

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

Description of publication	Classification
<p>1. Publications that:</p> <ul style="list-style-type: none"> (a) describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or (b) describe or depict in a way that is likely to cause offence to a reasonable adult, a minor who is, or who appears to be, under 16 (whether the minor is engaged in sexual activity or not); or (c) promote, incite or instruct in matters of crime or violence. 	RC
<p>2. Publications (except RC publications) that:</p> <ul style="list-style-type: none"> (a) explicitly depict sexual or sexually related activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or 	Category 2 Restricted

(b) depict, describe or express revolting or abhorrent phenomena in a way that is likely to cause offence to a reasonable adult and are unsuitable for a minor to see or read.	
3. Publications (except RC publications and Category 2 restricted publications) that: <ul style="list-style-type: none"> (a) explicitly depict nudity, or describe or impliedly depict sexual or sexually related activity between consenting adults, in a way that is likely to cause offence to a reasonable adult; or (b) describe or express in detail violence or sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or (c) are unsuitable for a minor to see or read. 	Category 1 restricted
4. All other publications.	Unrestricted

FILMS

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

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

(whether or not engaged in sexual activity); or (c) promote, incite or instruct in matters of crime or violence.	
2. Films (except RC films) that: (a) explicitly depict sexual activity between adults, where there is no sexual violence, coercion or non consent of any kind, in a way that is likely to cause offence to a reasonable adult; and (b) are unsuitable for a minor to see.	X
3. Films (except RC films and X films) that are unsuitable for a minor to see.	R
4. Films (except RC films, X films and R films) that depict, express or otherwise deal with sex, violence or coarse language in such a manner as to be unsuitable for viewing by persons under 15.	MA
5. Films (except RC films, X films, R films, MA films) that cannot be recommended for viewing by persons who are under 15.	M
6. Films (except RC films, R films, X films, MA films and M films) that cannot be recommended for viewing by persons who are under 15 without the guidance of their parents or guardians.	PG
7. All other films	G

COMPUTER GAMES

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

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

<p>(b) depict in a way that is likely to cause offence to a reasonable adult a minor who is, or who appears to be, under 16 (whether or not engaged in sexual activity); or</p> <p>(c) promote, incite or instruct in matters of crime or violence; or</p> <p>(d) are unsuitable for a minor to see or play.</p>	
2. Computer games (except RC computer games) that depict, express or otherwise deal with sex, violence or coarse language in such a manner as to be unsuitable for viewing or playing by persons under 15.	MA (15+)
3. Computer games (except RC and MA (15+) computer games) that cannot be recommended for viewing or playing by persons who are under 15.	M (15+)
4. Computer games (except RC, MA (15+) and M (15+) computer games) that cannot be recommended for viewing or playing by persons who are under 8.	G (8+)
5. All other computer games.	G