

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

Classification of Publications Ordinance 1983

No. 59 of 1983

This Ordinance introduces a censorship classification system for publications and films (including videocassettes) in the Australian Capital Territory.

All States/Territories (except Queensland and the A.C.T.) legislated to introduce classification systems for publications during the 1970's. Previously, the sale of offensive material in the A.C.T. was subject to the provisions of the Objectionable Publications Ordinance 1958, which reflected neither current community attitudes regarding the general availability of objectionable material, nor current practice relating to its sale. In practice, the sale/hire of objectionable publications and films/videocassettes in the A.C.T. was virtually unregulated.

Commonwealth/State Ministers with responsibility for censorship met in Brisbane in July 1983 and agreed in principle to the introduction of a uniform censorship classification scheme for publications and films/videocassettes, based largely on the system currently operating in South Australia. This Ordinance was drafted in consultation with State/Territory Governments and has been accepted by them as suitable for

use as model legislation for implementation of the uniform classification scheme. Amendments to Customs regulations designed to reconcile the law relating to the importation of censorable material with that relating to its sale have also been made and the scheme will come into operation on 1 February 1984.

The Ordinance gives effect to the Government's policy on censorship that adults be entitled to read hear and see what they wish in private and in public, subject to adequate provisions preventing persons being exposed to unsolicited material offensive to them and preventing conduct exploiting, or detrimental to the interests of children.

It is designed to ensure maximum freedom for adults to view what they wish in the privacy of their own homes; at the same time it provides guidance to consumers as to what they are buying or hiring and places limits on what can be openly displayed, or sold to children.

The basic elements of the Ordinance are as follows:

- . It provides for the classification of publications (including films/videocassettes) for display, sale or hire.
- . Controls over offensive material are concentrated at the point-of-sale - Commonwealth and State/Territory Governments having reached agreement that this is the only point in the distribution chain where effective controls can be implemented.

- . It is essentially voluntary and self-regulating. There is no requirement for all material to be formally classified, but potentially offensive material must be sold in accordance with the requirements of the Ordinance.

- . Printed matter is classified into 3 groups: unrestricted, (objectionable) Category 1 and (objectionable) Category 2. Films/videocassettes are classified in accordance with the current classifications for theatrical film: "G" - For General Exhibition, "PG" - Parental Guidance (replacing the "NRC" - Not Recommended for Children), "M" - for Mature Audiences and "R" - For Restricted Exhibition; an additional classification - "X" - is applied to hard core pornography.

- . Objectionable publications (printed matter which is or would be classified Category 1 or Category 2 and film classified "R" or "X") may only be sold in accordance with the conditions specified in the Ordinance.

- . A publication (including a film/videocassette) is to be refused classification if, in the opinion of the censor, it is so objectionable that it should not be published irrespective of whatever conditions might be placed on its sale. Child

pornography and material which promotes, incites or encourages terrorism are expressly provided to fall into this category.

- . Officers of the Commonwealth Attorney-General's Department located in the Territory and at points of importation will be appointed as classification officers for printed matter; the Film Censorship Board and Deputy Censors appointed under the Customs (Cinematograph Films) Regulations will classify films/videocassettes for sale or hire.

- . A Publications Review Board is established to review decisions of the classification officers in the A.C.T., while States/Territories will retain their established publications review boards. The Commonwealth Cinematograph Films Board of Review is to review decisions of the Film Censorship Board and Deputy Censors relating to films/videocassettes.

- . Any person may apply for classification; however, only the original applicant, the publisher or the Attorney-General may apply for review of a decision.

Detailed clause notes are attached.

Authority: Attorney-General

A.C.T. Classification of Publications Ordinance 1983

Part 1 - Preliminary

Clause 1 provides that the Ordinance may be cited as the Classification of Publications Ordinance 1983.

Clause 2 provides for the commencement of the Ordinance on a date to be fixed by the Minister for Territories and Local Government. This is expected to be 1 February 1984.

Clause 3 defines the terms used in the Ordinance. Of particular interest are the definitions of a "publication" and a "film". A "publication" includes all written and pictorial matter (including films/videocassettes) that is made available for display, sale or hire; a "film" includes any form of recording, including a videocassette, from which a visual image can be produced.

Clause 4 limits the application of the Ordinance to film other than that classified for public exhibition in theatres or on television, these being covered by other Commonwealth/State legislation.

Part II - Administration

Clause 5 provides that the Attorney-General may appoint classification officers for the purposes of the Ordinance.

Clauses 6 - 16 provide for the establishment and conduct of the Publications Review Board.

These are fairly standard provisions for the establishment of a board of this type. The Attorney-General is to appoint 3 - 5 members, one of whom is to be Chairman and another Deputy-Chairman, and may terminate the appointments under certain circumstances.

The only prescribed criteria for the appointment of members are that at least one is to be a woman, at least one is to be a man and all are subject to an age limit of 65 years. It is envisaged that the Board will reflect an appropriate range of community views.

Part III - Classification of Publications

Division 1 - Publications other than films

Clause 17 confines this Division to publications other than films.

Clause 18 provides for the classification of publications by a classification officer.

Any person may apply for the classification of a publication. The application is to be in writing and is to be lodged with the classification officer, who is required to determine the classification. He must notify the applicant of his decision in writing and must, within 30 days of the decision, publish it in the Gazette. The decision is to take effect on the day the notice is published in the Gazette.

Clause 19 sets out the classifications which may be applied to a publication.

Where a publication is considered by a classification officer to be neither objectionable nor unsuitable for perusal by a minor, it is to be classified as unrestricted (sub-section 19(1)).

Where a publication is considered to be likely to cause offence to a reasonable adult person or to be unsuitable for perusal by a minor it is to be classified as a Category 1 or Category 2 restricted publication (sub-section 19(2)). The conditions of sale of classified publications will govern which classification is awarded.

Where a publication is considered to be so offensive to reasonable adult persons that it should not be available for sale under any circumstances, to be child pornography or to incite terrorism, it is to be refused classification (sub-sections 19(3) and (4)).

It will be open to the classification officer to classify weekly and fortnightly publications on a continuing basis. This is designed to enable the classification of locally produced publications which appear frequently and are subject to tight publication deadlines (sub-section

Clause 20 provides for the review of decisions of a classification officer by the Publications Review Board. Only the original applicant, the publisher, or the Attorney-General may apply for review of a decision. Review is limited in this way to ensure that distributors who have had their publications classified in good faith prior to ordering stocks from overseas are not disadvantaged by frivolous applications for review.

Clause 21 provides that the original applicant is to be notified if another person applies for review of a decision.

Clause 22 confers on the Board powers to confirm or set aside and substitute its own decision for that of a classification officer. The Board must notify the applicant of the decision in writing and publish it in the Gazette.

Division 2 - Films

Clause 23 allows any person to apply to the Censorship Board for the classification of a film/videocassette; the application is to be accompanied by a copy of any advertising matter relating to the film.

Clause 24 provides for the screening of a film at the discretion of the Chief Censor of the Censorship Board after an application for classification has been lodged.

Clause 25 provides for approval of the classification of films without screening by the Censorship Board.

Where a film is considered to be neither objectionable nor unsuitable for viewing by a minor, it is to be approved for classification as a "G" film if it is considered suitable for general exhibition; as a "PG" film if it is considered that it should only be viewed by persons under the age of 15 years with the guidance of a parent or guardian; or as an "M" film where it is considered that it cannot be recommended for viewing by persons under the age of 15 years (sub-section 25(1)). These classifications are recommendatory and reflect the advisory classifications currently applied by the Film Censorship Board to film for public exhibition in cinemas.

Where a film is considered to be likely to be offensive to a reasonable adult person or unsuitable for viewing by a minor it is to be approved for classification as an "R" or an "X" film (sub-section 25(2)). The "R" classification is similar to the "R" rating applied by the Censorship Board to films for public exhibition in a cinema. The "X" is a new classification. Films classified "R" and "X" under the Ordinance are subject to similar conditions to those applied to Category 1 and Category 2 publications respectively.

Where a film is considered to be so offensive to reasonable adult persons that it should not be available for sale or hire under any conditions, to be child pornography, or to incite terrorism, it is to be refused approval (sub-section 25(3) and (4)).

Clause 26 provides for the approval of films which have been screened by a Censor.

Clause 27 provides for the classification of films by the Chief Censor in accordance with the classification approved by a Censor.

Clause 28 provides that "advertising matter" - for the purposes of the Ordinance, the covers of films - may be approved by a Censor, with or without conditions, or otherwise not approved. It is designed to ensure that the covers of the cassettes are appropriate to the classification the films have received.

Clause 29 provides for the notification of a decision to the applicant and its publication in the Gazette.

Clause 30 provides for the review of decisions of the Censorship Board or a Censor by the Cinematograph Films Board of Review (Board of Review). These provisions are similar to those applying to the review of decisions on publications by the Publications Review Board.

Clause 31 provides that the Board of Review is to notify the original applicant if an appeal is lodged by another person.

Clause 32 confers upon the Board of Review powers to confirm, or set aside and substitute its own decision for that of the Censorship Board or a Censor. The Board of Review must notify the applicant of the decision in writing and publish it in the Gazette.

Clause 33 is designed to ensure that there is no statutory requirement for a Censor or the Board of Review to deal with an application for classification of a film where another application for

classification for the same film is under consideration or has been lodged with the Board of Review. A similar provision in relation to publications is found in sub-section 18(6).

Division 3 - Miscellaneous

Clause 34 sets out the criteria to be applied in classifying publications. The prescribed authorities are to have regard to:

- . current community standards (sub-section 34(1));
- . the principles that adults are entitled to read and view what they wish and that all persons are entitled to protection from exposure to unsolicited material that they find offensive (sub-section 34(2));
- . the merit and character of the publication (sub-section 34(3));
- . the conditions under which the publication should be made available to the public (sub-section 34(4)).

Clause 35 specifies the conditions under which classified publications may be sold: Category 1 publications and "R" films are not to be available to minors but may be displayed. Category 2 publications and "X" films are subject to more stringent conditions regarding display and delivery.

Clause 36 enables the Publications Review Board and the Films Board of Review to revoke the classification of a publication after a

period of twelve months has elapsed, having had regard to the propriety of the original decision. Notice of revocation must be published in the Gazette.

Part IV - Offences

Division 1 - Unclassified Publications and Objectionable Articles

Clause 37 defines the terms "objectionable publication" and "prescribed publication" for the purposes of the offence provisions of this Division. Under the general definition of an "objectionable publication", material which would be classified in the terms of the Ordinance is included. In this Division, a new definition which excludes classified publications is required. A "prescribed publication" is one which either involves child pornography or incites terrorism.

Clauses 38 - 42 are the general offence provisions.

It is an offence to:

- sell (Clause 38);
- possess for the purposes of selling (Clause 39);
- keep or permit to be kept for the purposes of selling (Clause 40);
- exhibit or display in a public place (Clause 41);

deposit in or on a public place, or on private premises
without the permission of the occupier (Clause 42);

an objectionable publication or a prescribed publication.

The penalty provisions are designed so that the penalties for dealing in prescribed publications are twice those for dealing in objectionable publications. Provision has been made for imprisonment to discourage persistent offenders for whom fines may not be a sufficient deterrent.

Clause 43 provides that it is an offence to make a prescribed publication for the purposes of sale. This is designed to discourage the manufacture of child pornography.

Clauses 44 and 45 provide for the Court to have regard to the character, merit and circumstances under which a publication has been sold in determining whether it is objectionable; these criteria do not apply to publications which have been refused classification or that are child pornography or incite terrorism.

Clause 46 provides that a person is not to be convicted of an offence in relation to an objectionable publication if the publication has been subsequently classified and was sold in accordance with the appropriate conditions applicable to the classification it subsequently received.

Division 2 - Classified Publications

Clause 47 provides that it is an offence to advertise, sell or otherwise publish a classified publication other than in accordance with the conditions prescribed in the Ordinance. It is also an offence to place a classified publication in a public area or, except with the permission of the occupier, in private premises.

Division 3 - Miscellaneous

Clause 48 provides, in relation to a film which has attracted an advisory classification that it is an offence to sell or hire it with any mark that indicates the film is not so classified or is differently classified. It is also an offence to sell a film in association with advertising matter that has been refused approval or which is not in accordance with any conditions that have been placed on its approval. While it is not compulsory for a film that has received an advisory classification to be marked at all, if it is marked it must be in such a way as to indicate the classification that it did in fact receive.

Clause 49 provides that it is an offence to sell an unclassified publication which bears the prescribed markings.

Clause 50 provides offences in relation to the conduct and management of a restricted publications area. Minors may not be admitted (sub-section 50(1)); a notice (to be prescribed in the Regulations and indicating the nature of the area) must be clearly displayed

(sub-section 50(2)); and "R" and "X" classified films may not be exhibited in the area (sub-section 50(3)).

Part V - Search, Seizure and Forfeiture

Clauses 51 - 55 comprise the search, seizure and forfeiture provisions of the Ordinance.

These are fairly standard search and seizure provisions and deal with search with and without a warrant. The consent of the occupier is required before a warrantless search may be made and there are safeguards provided in Clause 54 in that the police officer has to inform the person that he can refuse to give his consent to the search. Additionally, the police officer is required to obtain a signed acknowledgment that the occupier of the premises to be searched is aware that he may refuse to give his consent and of the fact that he has voluntarily given his consent.

Part VI - Miscellaneous

Clause 56 enables the Attorney-General to exempt persons or bodies from the provisions of the Ordinance. It is designed to enable certain bodies to carry on their work without undue restriction. Such bodies as the National Library of Australia, the Australian National University, the National Gallery and the Canberra College of Advanced Education will be prescribed for the purposes of this Clause.

Clause 57 provides that the Attorney-General must give his written consent before proceedings for an offence under the Ordinance are instituted.

Clause 58 abolishes the common law offences of obscene libel and conspiracy to corrupt public morals as they might apply to classified publications.

Clause 59 provides that notices required by the Ordinance are to be served by personal delivery, post or delivery to a person over the age of 16 years at the last known place of business.

Clause 60 enables the Attorney-General to determine fees for the purposes of this Ordinance. However, it has been decided that for the time being no fee will be set. The House of Assembly would be consulted before any fee was set.

Clause 61 requires the Publications Review Board to submit an annual report to the Attorney-General at the end of each calendar year. The Attorney-General will then send a copy of the report to the Speaker of the A.C.T. House of Assembly within 15 days of its receipt.

Clause 62 is necessary in view of the fact that the Ordinance will be administered by the Attorney-General.

Clause 63 repeals the Objectionable Publications Ordinance 1958 which this Ordinance is to replace.

Clause 64 provides the Attorney-General with a general regulation making power under the Act.

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