

## Classification of Publications Ordinance 1983

**No. 59 of 1983**

**TABLE OF PROVISIONS**

**PART I — PRELIMINARY**

**Section**

1. Short title
2. Commencement
3. Interpretation
4. Application

**PART II — ADMINISTRATION**

5. Classification officers
6. Publications Review Board
7. Publications Review Board—membership
8. Chairman of Board
9. Chairman of Board—vacation of office
10. Members of Board—resignation
11. Members of Board—termination of appointment
12. Notification of appointments
13. Meetings of Board
14. Fees and allowances
15. Protection of members
16. Disclosure of pecuniary interest

**PART III — CLASSIFICATION OF PUBLICATIONS**

*Division 1—Publications other than films*

17. Interpretation
18. Classification officer may classify publications
19. Classification of publications
20. Review of classification—application
21. Notice of application
22. Review of classification

*Division 2—Films*

23. Application for classification
24. Screening of films
25. Approval of classification of films by Censorship Board
26. Approval of classification of films following screening
27. Classification following approval
28. Advertising matter
29. Notice of decision
30. Review of classification—application
31. Notice of application
32. Review of classification
33. Application of Division

TABLE OF PROVISIONS—*continued*

## Section

*Division 3—Miscellaneous*

- 34. Criteria for classification
- 35. Conditions applying to classified publications
- 36. Revocation of classifications

## PART IV — OFFENCES

*Division 1—Unclassified publications*

- 37. Interpretation
- 38. Sale, & c., of objectionable publications
- 39. Possession of objectionable publications
- 40. Keeping objectionable publications at premises
- 41. Publishing objectionable publications in a public place
- 42. Depositing objectionable publications in a public place
- 43. Making objectionable publications
- 44. Court to have regard to certain matters
- 45. Exemption of literary, & c., work
- 46. Subsequent classification of publication

*Division 2—Classified publications*

- 47. Sale, & c., of classified publications

*Division 3—Miscellaneous*

- 48. Films—offences
- 49. Unclassified publications—offences
- 50. Restricted publications area—offences

## PART V — SEARCH, SEIZURE AND FORFEITURE

- 51. Interpretation
- 52. Search and seizure
- 53. Search warrants
- 54. Consent to search
- 55. Forfeiture and return of publications

## PART VI — MISCELLANEOUS

- 56. Exemptions
- 57. Authority to prosecute
- 58. Abolition of common law offences
- 59. Service of notices
- 60. Power to determine fees
- 61. Annual report
- 62. Amendment of *Seat of Government (Administration) Ordinance 1930*
- 63. Repeal
- 64. Regulations

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## Classification of Publications Ordinance 1983

No. 59 of 1983

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 21 December 1983.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

GARETH EVANS  
Attorney-General

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An Ordinance to provide for the classification of publications and for other related purposes

### PART I—PRELIMINARY

#### Short title

1. This Ordinance may be cited as the *Classification of Publications Ordinance 1983*.<sup>1</sup>

#### Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories and Local Government by notice in the *Gazette*.

#### Interpretation

3. (1) In this Ordinance, unless the contrary intention appears—

“adult” means a person of or above the age of 18 years;

“advertising matter”, in relation to a film, means a publication comprising any written or pictorial matter contained or displayed in or on any container or wrapping where that container or wrapping is used to enclose the film;

“approved” means approved under this Ordinance;

- “Board” means the Publications Review Board established by this Ordinance;
- “Category 1 restricted publication” means a publication classified as a Category 1 restricted publication under this Ordinance;
- “Category 2 restricted publication” means a publication classified as a Category 2 restricted publication under this Ordinance;
- “Censor” means the Chief Censor, the Deputy Chief Censor, a member of the Censorship Board or a Deputy Censor;
- “Censorship Board” means the Censorship Board established under the Films Regulations;
- “Chairman” means the Chairman of the Board;
- “Chief Censor” means the person appointed to be the Chief Censor under the Films Regulations;
- “classification officer” means a person appointed as a classification officer under section 5;
- “classified” means classified under this Ordinance;
- “Court” means the Court of Petty Sessions;
- “Deputy Censor” means a person appointed to be a Deputy Censor under the Films Regulations;
- “Deputy Chief Censor” means the person appointed to be the Deputy Chief Censor under the Films Regulations;
- “film” includes a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image can be produced;
- “Films Board of Review” means the Cinematograph Films Board of Review established under the Films Regulations;
- “Films Regulations” means the Customs (Cinematograph Films) Regulations made and in force from time to time under the *Customs Act 1901*;
- “member” means member of the Board and includes the Chairman;
- “minor” means a person under the age of 18 years;
- “objectionable publication” means a publication that—
- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult person;
  - (b) depicts in pictorial form a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person; or
  - (c) promotes, incites or encourages terrorism;
- “public place” means any premises, street, road, footpath, public park within the meaning of the *Public Parks Ordinance 1928*, reserve or

other place which the public are entitled to use or which is open to, or used by, the public whether on payment of money or otherwise;

“publication“ means any book, paper, magazine, film or other written or pictorial matter that is made available, or is intended to be made available, for exhibition, display, sale, letting on hire or distribution to the public;

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

“restricted publications area“ means any premises, or part of any premises, constructed, conducted and managed in accordance with the prescribed requirements;

“sell“ means sell by retail or exchange and includes an agreement to sell and an agreement or offer to exchange;

“terrorism“ has the same meaning as in the *Australian Security Intelligence Organization Act 1979*.

(2) A reference in this Ordinance to a determined fee shall be read as a reference to the fee determined under section 60 for the purposes of that provision.

#### **Application**

4. Nothing in this Ordinance applies to, or in relation to, a film that—

(a) is registered under the Films Regulations; or

(b) has been produced in Australia by or on behalf of an Australian television station.

## **PART II—ADMINISTRATION**

### **Classification officers**

5. The Attorney-General may, by instrument in writing, appoint such persons as he considers necessary to be classification officers for the purposes of this Ordinance.

### **Publications Review Board**

6. (1) There is established by this Ordinance a Board called the Publications Review Board.

(2) The function of the Board is to review decisions made by classification officers classifying or refusing to classify publications (other than films) under this Ordinance.

### **Publications Review Board—membership**

7. (1) The Board shall consist of not less than 3, or more than 5, members each of whom shall be appointed by the Attorney-General.

(2) At least one member shall be a woman and at least one member shall be a man.

(3) A member shall hold office for such period, not exceeding 3 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(4) A person who has attained the age of 65 years shall not be appointed or re-appointed as a member of the Publications Review Board and a person shall not be appointed or re-appointed as such a member for a period that extends beyond the date on which he will attain the age of 65 years.

(5) The performance of the function, or the exercise of the powers, of the Board is not affected by reason only of there being a vacancy or vacancies in the membership of the Board.

#### **Chairman of Board**

8. The Attorney-General shall appoint one of the members of the Board to be the Chairman of the Board and another of those members to be the Deputy Chairman of the Board.

#### **Chairman of Board—vacation of office**

9. Where the person holding office as Chairman of the Board ceases to be a member of the Board, he shall cease to be the Chairman of the Board.

#### **Members of Board—resignation**

10. A member of the Board may resign his office by writing signed by him and delivered to the Attorney-General.

#### **Members of Board—termination of appointment**

11. (1) The Attorney-General may terminate the appointment of a member of the Board by reason of misbehaviour or physical or mental incapacity.

(2) If a member of the Board—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or

(b) is absent, except on leave granted by the Attorney-General, from 3 meetings of the Board in any one period of 12 months,

the Attorney-General shall terminate the appointment of the member.

#### **Notification of appointments**

12. The Attorney-General shall cause a notice of an appointment made under section 7 or 8 and of the termination of an appointment to be published in the *Gazette*.

#### **Meetings of Board**

13. (1) The Chairman of the Board or, in his absence, the Deputy Chairman of the Board shall convene such meetings of the Board as are necessary for the performance of its function.

(2) The Chairman of the Board or, in his absence, the Deputy Chairman of the Board shall preside at all meetings of the Board at which he is present.

(3) At a meeting of the Board, a quorum is constituted by 3 members.

(4) A question arising at a meeting of the Board shall be determined by a majority of votes of the members present and voting.

(5) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

#### **Fees and allowances**

14. The Board is a prescribed authority for the purposes of the *Remuneration Ordinance 1976*.

#### **Protection of members**

15. An action of proceeding, civil or criminal, does not lie against a member of the Board for or in respect of any act or thing done in good faith by the member in his capacity as a member.

#### **Disclosure of pecuniary interest**

16. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the member shall not—

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

(3) Where a member fails, without reasonable excuse, to comply with the requirements of this section, the Attorney-General shall terminate the appointment of the member.

### **PART III—CLASSIFICATION OF PUBLICATIONS**

#### ***Division 1—Publications other than films***

#### **Interpretation**

17. In this Division, “publication” means a publication other than a film or advertising matter in relation to a film.

#### **Classification officer may classify publications**

18. (1) A classification officer may, of his own motion or on application by any person, classify a publication for the purposes of this Ordinance.

(2) An application for the classification of a publication shall be in writing signed by, or on behalf of, the applicant and shall be lodged with a classification officer together with the determined fee.

(3) Where an application is made under this section, a classification officer shall determine the application and notify the applicant in writing of his decision.

(4) Where a classification officer makes a decision classifying or refusing to classify a publication, he shall cause a notice of the decision to be published in the *Gazette* within 30 days after the date on which the decision was made.

(5) A decision referred to in sub-section (4) shall take effect on the date on which the notice of the decision is published in the *Gazette* in accordance with that sub-section.

(6) This section does not apply to or in relation to an application in respect of a publication where—

- (a) a previous application in respect of the same publication has been made but not determined; or
- (b) a classification officer has made a decision classifying or refusing to classify the publication and that decision is being reviewed by the Publications Review Board.

### Classification of publication

19. (1) Where a classification officer decides that a publication—

- (a) is not an objectionable publication; and
- (b) is not unsuitable for perusal by a minor,

he shall classify the publication as an unrestricted publication.

(2) Subject to this section, where a classification officer decides that a publication—

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult person; or
- (b) is unsuitable for perusal by a minor,

the classification officer shall classify the publication as a Category 1 or a Category 2 restricted publication.

(3) A classification officer shall refuse to classify a publication where he is satisfied that the publication describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a manner that it offends against the standards of morality, decency and propriety generally accepted by reasonable adult persons to the extent that it should not be classified.



(4) A classification officer shall refuse to classify a publication, being a publication—

- (a) that depicts in pictorial form a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person; or
- (b) that promotes, incites or encourages terrorism.

(5) Where a classification officer classifies a publication that is a single issue of a series of weekly or fortnightly periodic publications, he may declare that the classification applies to all future issues in the series, or to such issues in that series as are specified in the declaration, and the classification shall apply to those issues accordingly.

#### **Review of classification—application**

20. (1) Where a classification officer has made a decision classifying, or refusing to classify, a publication—

- (a) the person who applied for the classification;
- (b) the publisher of the publication; or
- (c) the Attorney-General,

may apply to the Board for a review of the decision.

(2) An application under sub-section (1) shall be in writing signed by, or on behalf of, the applicant and shall be lodged with the Chairman of the Board—

- (a) where the applicant is a person referred to in paragraph (1) (a)—within 30 days after the date on which he received written notification of the decision to which the application relates;
- (b) where the applicant is a person referred to in paragraph (1) (b)—within 30 days after the date of publication of the notice of the decision in the *Gazette*; and
- (c) where the applicant is the Attorney-General—at any time after the date of publication of the notice of the decision in the *Gazette*.

(3) The determined fee is payable by an applicant, other than the Attorney-General, on lodging an application under this section.

#### **Notice of application**

21. Where—

- (a) a classification officer has made a decision classifying or refusing to classify a publication on an application made by any person; and
- (b) a person other than that person applies to the Board for a review of that decision,

the Board shall cause a notice in writing of the application for review to be given to the person referred to in paragraph (a).

### **Review of classification**

22. (1) Where an application for review of a decision of a classification officer is made to the Board, the Board shall review that decision and may make a decision—

- (a) confirming the decision of the classification officer; or
- (b) setting aside that decision and classifying or refusing to classify the publication to which that decision relates, as the Board thinks fit.

(2) Subject to this section, where the Board makes a decision under this section, the Chairman of the Board shall, within 14 days after the date on which the decision is made—

- (a) notify the applicant in writing of the decision; and
- (b) cause a notice setting out the terms of the decision to be published in the *Gazette*.

(3) The Chairman of the Board shall keep a record of all decisions made by the Board under this section.

(4) A decision made by the Board under this section shall take effect on the day on which a notice of the decision is published in the *Gazette* in accordance with sub-section (2).

### **Division 2—Films**

#### **Application for classification**

23. (1) An application for the classification of a film may be made to the Censorship Board by any person.

(2) An application for the classification of a film shall be in accordance with a form approved by the Chief Censor and shall be lodged with a Censor together with the determined fee, a synopsis of the story depicted by the film and a copy of any advertising matter relating to the film.

#### **Screening of films**

24. (1) The Chief Censor may require a film that is the subject of an application for classification to be screened in accordance with this Division.

(2) The Chief Censor may direct that the screening of a film take place before—

- (a) the Censorship Board;
- (b) a member of that Board; or
- (c) a Deputy Censor.

(3) Where the Chief Censor requires a film to be screened, the film shall be screened as and when required by a Censor.

(4) The screening shall be carried out at the risk of the person who applied for classification of the film.

(5) At a screening of a film, the person who applied for classification of the film, not more than 4 representatives of that person and such other persons as are approved by the Chief Censor are entitled to be present.

**Approval of classification of films by Censorship Board**

25. (1) Where the Censorship Board decides that a film—

- (a) is not an objectionable publication; and
- (b) is not unsuitable for viewing by a minor,

the Board shall approve the classification of the film—

- (c) as a "G" film, where it is of the opinion that the film is suitable for general exhibition;
- (d) as a "PG" film, where it is of the opinion that the film should only be viewed by a person under the age of 15 years with the guidance of a parent or guardian of that person; or
- (e) as an "M" film, where it is of the opinion that the film cannot be recommended for viewing by persons under the age of 15 years.

(2) Subject to this section, where the Censorship Board decides that a film—

- (a) depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult person; or
- (b) is unsuitable for viewing by a minor,

the Board shall approve the classification of the film as an "R" film or an "X" film.

(3) The Censorship Board shall refuse to approve the classification of a film where the Board is satisfied that the film depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a manner that it offends against the standards of morality, decency and propriety generally accepted by reasonable adult persons to the extent that it should not be classified.

(4) The Censorship Board shall refuse to approve the classification of a film that—

- (a) depicts a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person; or
- (b) promotes, incites or encourages terrorism.

**Approval of classification of films following screening**

26. (1) Where a film is screened before a member of the Board or a Deputy Censor, the member or Deputy Censor shall—

- (a) if he is of the opinion that the film is a film of the kind referred to in sub-section 25 (3) or (4), refer the application for classification to the Chief Censor; and

- (b) in any other case, approve the classification of the film—
- (i) as a "G" film, where he is of the opinion that the film is a film of the kind referred to in paragraph 25 (1) (c);
  - (ii) as a "PG" film, where he is of the opinion that the film is a film of the kind referred to in paragraph 25 (1) (d);
  - (iii) as an "M" film, where he is of the opinion that the film is a film of the kind referred to in paragraph 25 (1) (e); or
  - (iv) as an "R" film or an "X" film, where he is of the opinion that the film is a film of the kind referred to in sub-section 25 (2),
- or refer the application for classification to the Chief Censor.

(2) Where a member of the Censorship Board or a Deputy Censor refers an application for classification to the Chief Censor under sub-section (1), the Chief Censor shall cause the film to be screened before the Board.

#### **Classification following approval**

27. Where the Censorship Board, a member of that Board or a Deputy Censor has approved the classification of a film under this Division, the Chief Censor shall cause the film to be classified accordingly.

#### **Advertising matter**

28. (1) Where the Censorship Board, a member of that Board or a Deputy Censor is of the opinion that advertising matter relating to a film that is the subject of an application for classification under this Division—

- (a) depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a manner that it offends against the standards of morality, decency and propriety generally accepted by reasonable adult persons to the extent that it should not be approved;
- (b) depicts a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person; or
- (c) promotes, incites or encourages terrorism,

the Board, member or Deputy Censor shall refuse to approve the advertising matter but otherwise shall approve the advertising matter.

(2) The Censorship Board, a member of that Board or a Deputy Censor may approve advertising matter under sub-section (1) subject to such conditions (if any) in relation to the publication of the advertising matter as the Board, member or Deputy Censor thinks fit.

#### **Notice of decision**

29. (1) Where the Censorship Board, a member of that Board or a Deputy Censor makes a decision—

- (a) approving, or refusing to approve, the classification of a film; or

(b) approving, or refusing to approve, advertising matter relating to a film, the Chief Censor shall cause a notice of the decision—

- (c) to be given in writing to the person who applied for classification of the film; and
- (d) to be published in the *Gazette* within 30 days after the date on which the decision was made.

(2) A decision referred to in sub-section (1) shall take effect on the date on which the notice of the decision is given to the applicant in accordance with that sub-section.

#### **Review of classification—application**

30. (1) Where the Censorship Board, a member of that Board or a Deputy Censor has made a decision approving, or refusing to approve, the classification of a film or approving, or refusing to approve, advertising matter in relation to a film—

- (a) the person who applied for the classification;
- (b) the publisher of the film; or
- (c) the Attorney-General,

may apply to the Films Board of Review for a review of the decision.

(2) An application under sub-section (1) shall be in writing signed by, or on behalf of, the applicant and shall be lodged with the Chairman of the Films Board of Review—

- (a) where the applicant is a person referred to in paragraph (1) (a)—within 30 days after the date on which he received written notification of the decision to which the application relates;
- (b) where the applicant is a person referred to in paragraph (1) (b)—within 30 days after the date of publication of the notice of the decision in the *Gazette*; and
- (c) where the applicant is the Attorney-General—at any time after the date of publication of the notice of the decision in the *Gazette*.

(3) The determined fee is payable by an applicant, other than the Attorney-General, on lodging an application under this section.

#### **Notice of application**

31. Where—

- (a) the Censorship Board, a member of that Board or a Deputy Censor has made a decision approving, or refusing to approve, the classification of a film, or approving, or refusing to approve, advertising matter in relation to a film on an application made by any person; and
- (b) a person other than that person applies to the Films Board of Review for a review of that decision,

the Films Board of Review shall cause a notice in writing of the application for review to be given to the person referred to in paragraph (a).

### Review of classification

32. (1) Where an application for review of a decision of the Censorship Board, a member of that Board or a Deputy Censor is made to the Films Board of Review, the Board shall review that decision and may make a decision—

- (a) confirming the decision of that Board, member or Deputy Censor; or
- (b) setting aside that decision and classifying, or refusing to classify, the film or approving, or refusing to approve, the advertising matter to which that decision relates, as the Films Board of Review thinks fit.

(2) Where the Films Board of Review makes a decision under this section, the Chairman of the Board shall, within 14 days after the date on which the decision is made—

- (a) notify the applicant in writing of the decision; and
- (b) cause a notice setting out the terms of the decision to be published in the *Gazette*.

(3) The Chairman of the Films Board of Review shall keep a record of all decisions made by the Board under this section.

(4) A decision made by the Films Board of Review under this section shall take effect on the day on which a notice of the decision is published in the *Gazette* in accordance with sub-section (2).

### Application of Division

33. Nothing in this Division applies to or in relation to an application for classification of a film where—

- (a) a previous application for classification of the same film has been made but not determined; or
- (b) a decision approving, or refusing to approve, the classification of the film is the subject of an application for review by the Films Board of Review and that Board has not determined that application.

### Division 3—Miscellaneous

#### Criteria for classification

34. (1) A prescribed authority shall, in considering whether a publication is an objectionable publication, or is suitable or unsuitable for perusal or viewing by a minor, have regard to the standards of morality, decency and propriety generally accepted by reasonable adult persons.

(2) A prescribed authority shall, in performing his or its respective functions under this Ordinance, give effect, as far as possible, to the following principles:

- (a) that adult persons are entitled to read and view what they wish; and
- (b) that all persons are entitled to protection from exposure to unsolicited material that they find offensive.

(3) A prescribed authority shall, in deciding whether or not a publication is an objectionable publication, or is suitable or unsuitable for perusal or viewing by a minor, have regard to any literary, artistic or educational merit it may possess and to the general character of the publication, including whether it is of a medical, legal or scientific character.

(4) A prescribed authority shall, in deciding what classification (if any) should be given to a publication, have regard to—

- (a) the persons or class of persons to or amongst whom it is published or is intended or likely to be published; and
- (b) the conditions (if any) subject to which it should be published.

(5) In this section, "prescribed authority" means a classification officer, the Publications Review Board, the Censorship Board, a member of the Censorship Board, a Deputy Censor and the Films Board of Review.

#### **Conditions applying to classified publications**

**35. (1)** The following conditions apply in relation to a publication that is classified as a Category 1 restricted publication:

- (a) the publication shall not be sold, let on hire or delivered to a minor (other than by a parent or guardian of that minor);
- (b) the publication shall not be exhibited or displayed for sale or hire in a public place unless the publication is contained in a sealed package;
- (c) where the sealed package referred to in paragraph (b) is made of transparent material—the publication shall bear the prescribed markings;
- (d) where the sealed package referred to in paragraph (b) is made of opaque material—both the publication and the package shall bear the prescribed markings.

(2) The following conditions apply in relation to a film that is classified as an "R" film:

- (a) the film shall not be sold, let on hire or delivered to a minor (other than by a parent or guardian of that minor);
- (b) the film shall not be exhibited or displayed in a public place unless the container, wrapping and casing in which the film is contained, bear the prescribed markings.

(3) The following conditions apply in relation to a publication that is classified as a Category 2 restricted publication or as an "X" film:

- (a) the publication shall not be sold, let on hire or delivered to a minor (other than by a parent or guardian of that minor);
- (b) the publication shall not be exhibited or displayed, except in a restricted publications area;
- (c) the publication shall not be sold, let on hire or exhibited, displayed or delivered for or on sale or hire unless the publication bears the prescribed markings;

- (d) the publication shall not be delivered to a person who has not made a direct request for the publication;
- (e) the publication shall not be delivered to a person unless it is contained in a package made of plain opaque material.

### **Revocation of classifications**

**36. (1)** Subject to this section, the Publications Review Board may, on application made in accordance with this section or of its own motion, revoke the classification of a publication (other than a film) or a decision refusing to classify a publication (other than a film).

**(2)** Subject to this section, the Films Board of Review may, on application made in accordance with this section or of its own motion, revoke the classification of a film or a decision refusing to approve the classification of a film or approving, or refusing to approve, advertising matter in relation to a film.

**(3)** An application under this section—

- (a) shall be in writing signed by, or on behalf of, the applicant; and
- (b) shall be lodged with the Chairman of the Board to which the application is made at any time after the expiration of the period of 12 months from the date on which the classification or decision to which the application relates came into effect.

**(4)** The Publications Review Board or the Films Board of Review shall not, of its own motion, revoke a classification or a decision at any time before the expiration of the period of 12 months from the date on which the classification or decision came into effect.

**(5)** The Publications Review Board or the Films Board of Review shall not revoke a classification or a decision unless it is satisfied that it is proper to do so, having regard to the provisions in this Part relating to the classification of publications and the conditions applying to classified publications.

**(6)** Where the Publications Review Board or the Films Board of Review revokes a classification or a decision under this section, that Board shall cause a notice of the revocation to be published in the *Gazette*.

## **PART IV—OFFENCES**

### ***Division 1—Unclassified publications***

#### **Interpretation**

**37.** In this Division—

“objectionable publication” means an objectionable publication, other than a Category 1 or Category 2 restricted publication, a film classified as an “R” film or an “X” film, or approved advertising matter in relation to a film;



“prescribed publication” means an objectionable publication of the kind referred to in paragraph (b) of the definition of “objectionable publication” in sub-section 3 (1).

#### **Sale, &c., of objectionable publications**

**38. (1)** A person who advertises, or sells, offers for sale, lets on hire or distributes an objectionable publication (other than a prescribed publication) is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$5,000; and
- (b) in the case of an individual—by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 6 months, or both.

**(2)** A person who advertises, or sells, offers for sale, lets on hire or distributes a prescribed publication is guilty of an offence, punishable on summary conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$10,000; and
- (b) in the case of an individual—by a fine not exceeding \$2,000 or by imprisonment for a period not exceeding 12 months, or both.

#### **Possession of objectionable publications**

**39. (1)** A person who has in his possession an objectionable publication (other than a prescribed publication) for the purpose of selling or otherwise publishing it is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$5,000; and
- (b) in the case of an individual—by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 6 months, or both.

**(2)** A person who has in his possession a prescribed publication for the purpose of selling or otherwise publishing it is guilty of an offence punishable, on summary conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$10,000; and
- (b) in the case of an individual—by a fine not exceeding \$2,000 or by imprisonment for a period not exceeding 12 months, or both.

#### **Keeping objectionable publications at premises**

**40. (1)** The occupier of any premises who keeps or permits to be kept at those premises an objectionable publication (other than a prescribed publication) for the purpose of selling or otherwise publishing it is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$5,000; and
- (b) in the case of an individual—by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 6 months, or both.

**(2)** The occupier of any premises who keeps or permits to be kept at those premises a prescribed publication for the purpose of selling or otherwise publishing it is guilty of an offence punishable, on summary conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$10,000; and

- (b) in the case of an individual—by a fine not exceeding \$2,000 or by imprisonment for a period not exceeding 12 months, or both.

**Publishing objectionable publications in a public place**

41. (1) A person who exhibits or displays an objectionable publication (other than a prescribed publication) in a public place, or in such a manner that it is visible to persons in or on a public place, is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$5,000; and
- (b) in the case of an individual—by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 6 months, or both.

(2) A person who exhibits or displays a prescribed publication in a public place, or in such a manner that it is visible to persons in or on a public place, is guilty of an offence punishable, on summary conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$10,000; and
- (b) in the case of an individual—by a fine not exceeding \$2,000 or by imprisonment for a period not exceeding 12 months, or both.

**Depositing objectionable publications in a public place**

42. (1) A person who deposits, or causes to be deposited, an objectionable publication (other than a prescribed publication) in or on a public place or, except with the permission of the occupier, in or on private premises is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$5,000; and
- (b) in the case of an individual—by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 6 months, or both.

(2) A person who deposits, or causes to be deposited, a prescribed publication in or on a public place or, except with the permission of the occupier, in or on private premises is guilty of an offence punishable, on summary conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$10,000; and
- (b) in the case of an individual—by a fine not exceeding \$2,000 or by imprisonment for a period not exceeding 12 months, or both.

**Making objectionable publications**

43. A person who prints or otherwise makes or produces a prescribed publication for the purpose of selling or otherwise publishing it is guilty of an offence punishable, on summary conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$10,000; and
- (b) in the case of an individual—by a fine not exceeding \$2,000 or by imprisonment for a period not exceeding 12 months, or both.

**Court to have regard to certain matters**

44. For the purpose of determining whether a publication (other than a publication that has been refused classification or advertising matter in relation

to a film, being advertising matter that has been refused approval) is objectionable, the Court shall have regard to the general character of the publication.

**Exemption of literary, &c., works**

**45. (1)** The Court shall not find a publication to be objectionable if it possesses literary or artistic merit or is of a medical, legal or scientific character unless the Court is satisfied that the conduct of the person alleged to have committed an offence against a provision of this Division in relation to the publication was not justified in the circumstances, having regard, in particular, to the persons or classes of persons into whose hands the publication was intended or was likely to come.

**(2)** Sub-section (1) does not apply to or in relation to—

- (a) a publication that has been refused classification;
- (b) advertising matter in relation to a film, being advertising matter that has been refused approval; or
- (c) a publication that is of a kind referred to in paragraph (b) or (c) of the definition of "objectionable publication" in sub-section 3 (1).

**Subsequent classification of publication**

**46.** A person shall not be convicted of an offence against a provision of this Division in relation to an objectionable publication if he establishes that—

- (a) since the offence was alleged to have been committed the publication has been classified under this Ordinance; and
- (b) the act alleged to constitute the offence did not infringe any conditions (other than the conditions relating to prescribed markings) that would have been applicable to the publication had it been so classified at the time when the act was done.

***Division 2—Classified Publications***

**Sale, &c., of classified publications**

**47. (1)** A person who advertises, or sells or otherwise publishes a publication, being—

- (a) a Category 1 or a Category 2 restricted publication; or
- (b) a film classified as an "R" film or an "X" film,

otherwise than in accordance with the conditions applicable to that publication, is guilty of an offence punishable, on conviction—

- (c) in the case of a body corporate—by a fine not exceeding \$2,500; and
- (d) in the case of an individual—by a fine not exceeding \$500 or by imprisonment for a period not exceeding 3 months, or both.

**(2)** A person who deposits, or causes to be deposited—

- (a) a Category 1 or a Category 2 restricted publication; or

- (b) a film classified as an "R" film or an "X" film, in or on a public place or, except with the permission of the occupier, in or on private premises, is guilty of an offence punishable, on conviction—
- (c) in the case of a body corporate—by a fine not exceeding \$5,000; and
- (d) in the case of an individual—by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 6 months, or both.

### **Division 3—Miscellaneous**

#### **Films—offences**

48. (1) A person shall not sell, offer for sale, let on hire or distribute a film that is classified as a "G" film, a "PG" film or an "M" film if the film, or the container or wrapping in which the film is sold, offered for sale, let on hire or distributed, bears any mark or other matter that indicates that the film is not so classified or is differently classified.

(2) A person shall not sell, offer for sale, let on hire or distribute a film (whether the film is classified or otherwise) in association with any advertising matter that has been refused approval.

(3) A person shall not publish any approved advertising matter in relation to a film except in accordance with the conditions (if any) to which the approval is subject.

(4) A person who contravenes this section is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$2,500; and
- (b) in the case of an individual—by a fine not exceeding \$500 or by imprisonment for a period not exceeding 3 months, or both.

#### **Unclassified publications—offences**

49. (1) A person shall not sell, offer for sale, let on hire or distribute a publication that is not a classified publication if the publication, or the container or wrapping in which the publication is sold, offered for sale, let on hire or distributed, bears a prescribed marking or any other mark or matter that indicates that the publication is classified.

(2) A person who contravenes this section is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$2,500; and
- (b) in the case of an individual—by a fine not exceeding \$500 or by imprisonment for a period not exceeding 3 months, or both.

#### **Restricted publications area—offences**

50. (1) A person who is in charge of, or who has the management or control of, a restricted publications area shall not permit a minor to enter that area.

(2) A person who is in charge of a restricted publications area shall cause to be displayed in a prominent place on or near each entrance to the area and so that it is clearly visible from outside the area a prescribed notice.

(3) A person who is in charge of, or who has the management or control of, a restricted publications area shall not, in that area, screen, or cause or permit to be screened, a film that is classified as an "R" film or an "X" film, other than by means of a slot-machine operated by a coin or token.

(4) A person who contravenes this section is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$2,500; and
- (b) in the case of an individual—by a fine not exceeding \$500 or by imprisonment for a period not exceeding 3 months, or both.

(5) A person shall not be convicted of an offence against sub-section (1) if he adduces evidence that he believed on reasonable grounds that the person in relation to whom the offence is alleged to have been committed was of or above the age of 18 years and that evidence is not rebutted by the prosecutor.

## PART V—SEARCH, SEIZURE AND FORFEITURE

### Interpretation

51. (1) For the purposes of this Part, a thing is connected with a particular offence if it is—

- (a) a thing with respect to which the offence has been committed;
- (b) a thing that will afford evidence of the commission of the offence; or
- (c) a thing that was used, or is intended to be used, for the purpose of committing the offence.

(2) A reference in this Part to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

### Search and seizure

52. (1) A police officer may enter upon land, or upon or into premises or a vessel or vehicle, and may search for and seize any thing that he believes on reasonable grounds to be connected with an offence against this Ordinance that is found on the land, or on or in the premises, vessel or vehicle if, and only if, the search and seizure is made by the police officer—

- (a) in pursuance of a warrant issued under this Part; or
- (b) after obtaining the consent of the occupier of the land or premises or of the person in charge of the vessel or vehicle to the entry.

### Search warrants

53. (1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon any

land or upon or in any premises, vessel or vehicle, a thing or things of a particular kind connected with a particular offence against this Ordinance, and the information sets out those grounds, the Magistrate may issue a search warrant authorizing a police officer named in the warrant, with such assistance as he thinks necessary and if necessary by force—

- (a) to enter upon the land or upon or into the premises, vessel or vehicle;
- (b) to search the land, premises, vessel or vehicle for things of that kind; and
- (c) to seize any thing of that kind found upon the land or upon or in the premises, vessel or vehicle that he believes on reasonable grounds to be connected with that offence.

(2) A Magistrate shall not issue a warrant under sub-section (1) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) There shall be stated in a warrant issued under sub-section (1)—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which the entry and search are authorized;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things authorized to be seized; and
- (d) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

(4) If, in the course of searching, in accordance with a warrant issued under sub-section (1), for things connected with a particular offence, being things of a kind specified in the warrant, a police officer finds any thing that he believes on reasonable grounds to be connected with the offence, although not of a kind specified in the warrant, or to be connected with another offence against this Ordinance, and he believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or in committing the other offence, the warrant shall be deemed to authorize him to seize that thing.

#### **Consent to search**

**54. (1)** Before obtaining the consent of a person for the purpose of section 52, a police officer shall inform the person that he may refuse to give his consent.

(2) A police officer who obtains the consent of a person for the purposes of section 52 shall ask the person to sign an acknowledgment—

- (a) of the fact that he has been informed that he may refuse to give his consent;
- (b) of the fact that he has voluntarily given his consent; and
- (c) of the date on which, and the time at which, he gave his consent.

(3) A search or entry by a police officer by virtue of the consent of a person is not lawful unless the person concerned voluntarily consented to the search or entry.

(4) Where it is material, in any proceedings, for the Court to be satisfied of the voluntary consent of a person for the purposes of section 52 and an acknowledgment, in accordance with sub-section (2), signed by the person has not been produced in evidence, the Court shall assume, unless the contrary is proved, that the person did not voluntarily give such consent.

#### **Forfeiture and return of publications**

55. (1) Where a person is convicted of an offence against this Ordinance in relation to an objectionable publication, the Court may order the publication to be forfeited to the Commonwealth.

(2) Where a person is charged with an offence against this Ordinance but the Court is not satisfied that he has committed the offence with which he is charged, the Court shall order that any publication to which the prosecution relates that has been seized as an objectionable publication be delivered to the person appearing to the Court to have been entitled to possession of the publication immediately before the seizure.

(3) Where a publication has been lawfully seized by a police officer as an objectionable publication but no person has been charged with an offence against this Ordinance in respect of that publication, a Magistrate shall, on the application of a police officer made within 14 days after the seizure of the publication, issue a summons requiring the occupier of the premises from which the publication was seized, or the person from whom it was seized, or both, as the Magistrate determines, to appear before the Court and show cause why the publication seized should not be forfeited to the Commonwealth.

(4) Where the Magistrate issues a summons under sub-section (3) in relation to a publication, he shall, so far as he considers it reasonably practicable to do so, cause notice of the proceedings to be given to every person whose name appears on the publication as the author, publisher, printer, manufacturer or owner of the publication.

(5) In proceedings under this section, the Court may permit a person who claims to be the author, publisher, printer, manufacturer or owner of the publication to which the proceedings relate (whether or not a notice has been given to him under sub-section (4)) and who appears or is represented in the proceedings to intervene in the proceedings for the purpose of maintaining that the publication is not-objectionable.

(6) Upon the hearing of the summons issued under sub-section (3), the Court shall—

- (a) if it is satisfied that there was a contravention of a provision of this Ordinance in respect of the publication and that it is desirable that the publication should be forfeited to the Commonwealth—order the publication to be forfeited to the Commonwealth; or
- (b) if it is not so satisfied—order that the publication be delivered to the person appearing to the Court to have been entitled to possession of the publication immediately before its seizure.

(7) Where a publication has been lawfully seized by a police officer as an objectionable publication and, at the expiration of 14 days after the seizure—

- (a) no person has been charged with an offence against this Ordinance in respect of the publication; and
- (b) a summons has not been issued under sub-section (3) in respect of the publication,

the publication shall be returned to the person from whom it was seized or to the occupier of the premises from which it was seized.

(8) Subject to sub-section (9), a publication which is forfeited to the Commonwealth under this section may be destroyed or otherwise dealt with, as directed by the Attorney-General.

(9) Where the Court has ordered a publication to be forfeited to the Commonwealth, the Attorney-General shall not direct the destruction of the publication before the expiration of the time allowed for instituting an appeal against the order, or, if an appeal is lodged within that time, before the determination of the appeal.

## PART VI—MISCELLANEOUS

### Exemptions

56. (1) The Attorney-General may, by notice in writing published in the *Gazette*, exempt a person or body specified in the notice from such of the provisions of this Ordinance, and subject to such conditions (if any), as are specified in the notice.

(2) Notwithstanding anything in this Ordinance, it is not an offence for a person—

- (a) to publish a Category 1 or a Category 2 restricted publication or a film classified as an “R” film or an “X” film to a prescribed person or body; or
- (b) to do any act or thing that falls within the scope of an exemption under sub-section (1) and that is done in accordance with the conditions (if any) to which that exemption is subject.



**Authority to prosecute**

57. Proceedings for an offence against this Ordinance shall not be instituted except with the written consent of the Attorney-General.

**Abolition of common law offences**

58. (1) The common law offence of obscene libel is abolished to the extent to which it applies in relation to a publication that—

- (a) is classified as an unrestricted publication or as a "G" film, a "PG" film or an "M" film;
- (b) is classified as a Category 1 or a Category 2 restricted publication or as an "R" film or an "X" film, and is published in accordance with the conditions applicable to publications of that kind; or
- (c) is approved advertising matter and is published in accordance with the conditions (if any) to which the approval is subject.

(2) The common law offence of conspiring to corrupt public morals is abolished to the extent to which it applies in relation to a publication that—

- (a) is classified as an unrestricted publication or as a "G" film or a "PG" film;
- (b) is classified as a Category 1 or a Category 2 restricted publication, or as an "R" film or an "X" film, and is published in accordance with the conditions applicable to publications of that kind; or
- (c) is approved advertising matter and is published in accordance with the conditions (if any) to which the approval is subject.

**Service of notices**

59. A notice that is required by this Ordinance to be given to a person may be given—

- (a) by delivering it to him personally;
- (b) by sending it to him by post addressed to him at his last known place of residence or business; or
- (c) by leaving it at his last known place of residence or business with a person apparently over the age of 16 years and apparently resident or employed at that place.

**Power to determine fees**

60. The Attorney-General may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Ordinance.

**Annual report**

61. (1) The Publications Review Board shall, as soon as practicable after 31 December in each year, prepare and furnish to the Attorney-General a report of its operations during the year ending on that date.

(2) The Attorney-General shall cause a copy of each report furnished to him under sub-section (1) to be delivered to the Speaker of the Australian

Capital Territory House of Assembly within 15 days after the date on which the report was so furnished to him.

**Amendment of the *Seat of Government (Administration) Ordinance 1930***

62. The Second Schedule to the *Seat of Government (Administration) Ordinance 1930* is amended—

- (a) by omitting from Part 1 "*Objectionable Publications Ordinance 1958*"; and
- (b) by inserting in Part 1—  
    "*Classification of Publications Ordinance 1983*"  
after—  
    "*Child Welfare Ordinance 1957, Part III*".

**Repeal**

63. The *Objectionable Publications Ordinance 1958* is repealed.

**Regulations**

64. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance and, in particular—

- (a) prescribing penalties for offences against the regulations, being penalties not exceeding \$1,000 in the case of a body corporate and not exceeding \$200 in the case of an individual; and
- (b) prescribing requirements in relation to the construction, conduct and management of restricted publications areas.

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**NOTE**

- 1. Notified in the *Commonwealth of Australia Gazette* on 23 December 1983.