

Western Australia

Censorship Amendment Act 2003

As at 26 May 2003

No. 30 of 2003

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Censorship Amendment Act 2003

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Western Australia

Censorship Amendment Act 2003

No. 30 of 2003

An Act to amend the *Censorship Act 1996* and for transitional purposes.

[Assented to 26 May 2003]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Censorship Amendment Act 2003*.

2. Commencement

- (1) This Act comes into operation on a day to be fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Part 2 — Amendments to *Censorship Act 1996*

3. The Act amended

The amendments in this Part are to the *Censorship Act 1996**.

[* *Act No. 40 of 1996* .]

4. Long title amended

The long title is amended by deleting “**the classification of publications, films and computer games,**”.

5. Section 3 amended

- (1) Section 3 is amended by deleting the definitions of “appeal censor”, “appropriate *Gazette*”, “censor”, “Code”, “Committee”, “Commonwealth Minister”, “computer generated image”, “decision”, “interactive game”, “member”, “refused publication”, “relevant Minister”, “restricted publication”, “Secretary” and “work”.
- (2) Section 3 is amended by deleting the definitions of “advertisement”, “classified”, “computer game”, “consumer advice”, “contentious material”, “determined markings”, “film”, “place”, “publication” and “publish” and inserting instead —
“

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

“classified” means classified under the Commonwealth Act and includes reclassified under that Act;

“computer game” has the same meaning as in the Commonwealth Act;

“consumer advice” means consumer advice determined under section 20 of the Commonwealth Act;

“contentious material”, in relation to a computer game, means material that would be likely to cause it to be classified M(15+), MA(15+) or RC;

“determined markings” means markings determined under section 8 of the Commonwealth Act;

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

“place” includes vacant land, premises, a vehicle, a vessel and an aircraft (except a vessel on an international voyage or an aircraft on an international flight);

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

“publish” includes sell, exhibit, display, distribute and demonstrate;

”.

- (3) Section 3 is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“approved advertisement” means an advertisement approved under section 29 of the Commonwealth Act;

“approved form” means a form approved by the Director and published in the Commonwealth Gazette;

“Board” means the Classification Board established by the Commonwealth Act;

“classification certificate” means a certificate issued under section 25 of the Commonwealth Act;

“Deputy Director” means Deputy Director of the Classification Board appointed under section 48 of the Commonwealth Act;

“Director” means Director of the Classification Board appointed under section 48 of the Commonwealth Act;

“exempt computer game” has the same meaning as in the Commonwealth Act;

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

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

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

“Registrar” means the Censorship Registrar appointed under section 128A;

“Review Board” means the Classification Review Board established by the Commonwealth Act;

“submittable publication” has the same meaning as in the Commonwealth Act and includes a publication called in by the Director under section 102A.

”.

6. Section 6 replaced

Section 6 is repealed and the following section is inserted instead —

“

6. Application of Act

This Act does not apply to —

- (a) broadcasting services to which the *Broadcasting Services Act 1992* of the Commonwealth applies; or
- (b) exempt films or exempt computer games.

”.

7. Parts 2, 3, 4, 5 and 6 repealed

Parts 2, 3, 4, 5 and 6 are repealed.

8. Section 57 amended

Section 57 is amended as follows:

- (a) by deleting “Subject to section 15(4), this” and inserting instead —

“ This ”;

- (b) by deleting paragraph (a) and inserting instead —

“

- (a) a publication that is classified Unrestricted, Category 1 restricted or Category 2 restricted;

”;

- (c) by deleting paragraph (d) and inserting instead —

“ (d) an approved advertisement. ”.

9. Part 7 Division 2 replaced

Part 7 Division 2 is repealed and the following Division is inserted instead —

“

Division 2 — Publications

61. Sale or supply of submittable or RC publications

- (1) A person must not sell or supply —
- (a) a submittable publication; or
 - (b) a publication classified RC.

Penalty: \$15 000 or imprisonment for 18 months.

- (2) It is a defence to a prosecution for an offence against subsection (1)(a) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.
- (3) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the publication was not a submittable publication or a publication classified RC, as the case may be.

62. Possession or copying of RC publications

A person must not possess or copy a publication classified RC.

Penalty: \$10 000.

63. Possession or copying of submittable publications with intention of selling

- (1) A person must not possess or copy a submittable publication with the intention of selling the publication or the copy.

Penalty: \$15 000 or imprisonment for 18 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.
- (3) In proceedings for an offence against subsection (1), evidence that a person had possession of, or made, 10 or more copies of a submittable publication is evidence that the person intended to sell the publication and, in the absence of evidence to the contrary, is proof of that fact.

64. Category 1 restricted publications

- (1) A person must not display, sell or supply a publication that is classified Category 1 restricted except in registered premises.
Penalty: \$2 000.
- (2) A person, other than a registered person, must not possess or copy a publication that is classified Category 1 restricted with the intention of selling the publication or copy.
Penalty: \$2 000.
- (3) In proceedings for an offence against subsection (2), evidence that a person had possession of, or made, 10 or more copies of a publication classified Category 1 restricted is evidence that the person intended to sell the publication and, in the absence of evidence to the contrary, is proof of that fact.
- (4) Subject to subsection (5), a person must not sell or supply a publication classified Category 1 restricted unless —
 - (a) on supply it is contained in a wrapper made of plain opaque material; and

- (b) both the publication and the wrapper bear the determined markings.

Penalty: \$2 000.

- (5) For the purposes of subsection (4), “**plain**” does not include the title of the publication.
- (6) If —
 - (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; or
 - (b) the Board revokes a classification for a publication under section 22B(3) of that Act,

it is sufficient compliance with subsection (4) for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

65. Category 2 restricted publications

- (1) A person must not display, sell or supply a publication that is classified Category 2 restricted except in registered premises.
Penalty: \$5 000.
- (2) A person, other than a registered person, must not possess or copy a publication that is classified Category 2 restricted with the intention of selling the publication or copy.
Penalty: \$5 000.
- (3) In proceedings for an offence against subsection (2), evidence that a person had possession of, or made, 10 or more copies of a publication classified Category 2 restricted is evidence that the person intended to sell the publication and, in the absence of evidence to the contrary, is proof of that fact.

- (4) A person must not sell or supply a publication that is classified Category 2 restricted to a person unless that person has made a direct request for the publication.
Penalty: \$5 000.
- (5) A person must not sell or supply a publication that is classified Category 2 restricted unless it is contained in a package made of opaque material.
Penalty: \$5 000.
- (6) A person must not sell, supply or publish a publication that is classified Category 2 restricted unless both the publication and the package it is contained in bear the determined markings.
Penalty: \$5 000.
- (7) If —
 - (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; or
 - (b) the Board revokes a classification for a publication under section 22B(3) of that Act,

it is sufficient compliance with subsection (6) for a period of 30 days after the decision to reclassify or revoke takes effect if the publication and the package bear the determined markings applicable to the publication before that reclassification or revocation.

65A. Sale or supply of publications contrary to conditions

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

Penalty: \$5 000.

65B. Consumer advice for Unrestricted publications

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

Penalty: \$2 000.

65C. Misleading or deceptive markings

- (1) A person must not publish an unclassified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication has been classified.

Penalty: \$5 000.

- (2) A person must not publish a classified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication is unclassified or has a different classification.

Penalty: \$5 000.

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

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

65D. Sale of restricted publications to minors

- (1) A person must not sell or supply to a minor a publication classified Category 2 restricted.
Penalty: \$15 000 or imprisonment for 18 months.
- (2) A person must not sell or supply to a minor a publication classified Category 1 restricted, unless the person is a parent or guardian of the minor.
Penalty: \$5 000.
- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) to prove that the minor produced to the defendant acceptable proof of age before the defendant sold or supplied the publication to the minor and the defendant believed on reasonable grounds that the minor was an adult.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) for the supply of a publication to a minor, to prove that the minor was employed by the person who supplied the publication and the supply took place in the course of that employment.
- (5) A minor who is 15 years of age or older must not buy a publication classified Category 1 restricted or Category 2 restricted, knowing that it is so classified.
Penalty: \$200.

65E. Leaving publications in certain places

- (1) A person must not leave in a public place or display in such a manner as to be visible to persons in a public place —
 - (a) a submittable publication; or
 - (b) a publication classified Category 1 restricted, Category 2 restricted or RC.
Penalty: \$10 000.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that —
- (a) since the offence was alleged to have been committed, the publication has been classified Unrestricted;
 - (b) the defendant believed on reasonable grounds that the publication was not a submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC, as the case may be;
 - (c) in the case of a publication classified Category 1 restricted, the publication was displayed on registered premises and the publication and packaging complied with section 64(4); or
 - (d) in the case of a publication classified Category 2 restricted, the publication was displayed on registered premises and was not visible from outside those premises or by a minor in the premises.
- (3) A person must not leave on private premises, without the occupier's permission —
- (a) a submittable publication; or
 - (b) a publication classified Category 1 restricted, Category 2 restricted or RC.
- Penalty: \$5 000.
- (4) It is a defence to a prosecution for an offence against subsection (3)(a) to prove that since the offence was alleged to have been committed, the publication has been classified Unrestricted.
- (5) It is a defence to a prosecution for an offence against subsection (3) to prove that the defendant believed on reasonable grounds that the publication was not a

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submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC, as the case may be.

”.

10. Section 76 amended

Section 76(4) is repealed and the following subsection is inserted instead —

“

- (4) If —
- (a) a film is reclassified under section 39 or 97A of the Commonwealth Act; or
 - (b) the Board revokes a classification or consumer advice for a film under section 22B(3) of that Act,

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

”.

11. Section 78 replaced

Section 78 is repealed and the following section is inserted instead —

“

78. Display of R film or containers

A person must not display in a public place —

- (a) a film classified R; or
- (b) the container, wrapping or casing for a film classified R,

with the intention of selling the film except in an area of the public place set aside by that person, and

conspicuously identified, as an area for the display of films, or containers, wrapping or casings for films, with that classification.

Penalty: \$500.

”.

12. Section 79 amended

After section 79(5) the following subsection is inserted —

“

- (6) A person must not supply to a minor a film classified X or RC or an unclassified film which would, if classified, be classified X or RC.

Penalty: \$15 000 or imprisonment for 18 months.

”.

13. Section 86 amended

Section 86(4) is repealed and the following subsections are inserted instead —

“

- (4) A person must not make a computer game available for playing on a pay and play basis (for example, a coin operated arcade game) unless the determined markings relevant to the classification of the computer game and relevant consumer advice, if any, are displayed on the device used for playing the game.

Penalty: \$5 000.

- (5) If 2 or more computer games are available for playing on a device referred to in subsection (4), the determined markings and consumer advice to be displayed on the device are those relevant to the computer game with the highest classification under the Commonwealth Act.

- (6) If —

- (a) a computer game is reclassified under section 39 of the Commonwealth Act; or

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

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

”.

14. Section 88 amended

- (1) Section 88(2) is amended by deleting “subsection (2)” and inserting instead —

“ subsection (1) ”.

- (2) After section 88(2) the following subsection is inserted —

“

- (3) A person must not supply to a minor a computer game classified RC or an unclassified computer game which would, if classified, be classified RC.

Penalty: \$15 000 or imprisonment for 18 months.

”.

15. Section 90 amended

- (1) Section 90(1) is amended by inserting after “advertisement for a” —

“ publication or ”.

- (2) Section 90(2) is repealed and the following subsection is inserted instead —

“

- (2) In subsection (1) —

“unapproved advertisement” means an advertisement that —

- (a) has not been submitted for approval under section 29 of the Commonwealth Act and, if submitted, would be refused approval;
- (b) has been refused approval under section 29 of the Commonwealth Act;
- (c) was approved under section 29 of the Commonwealth Act but the approval was revoked under section 13(5) or 21A of that Act; or
- (d) is approved under section 29 of the Commonwealth Act subject to conditions, and is not published in accordance with those conditions.

”.

16. Section 91 amended

Section 91(1) is amended as follows:

- (a) in paragraph (a) by deleting “section 44” and inserting instead —

“ section 33 of the Commonwealth Act ”;

- (b) by deleting “or” after paragraph (c);
- (c) by deleting the full stop at the end of paragraph (d) and inserting a semi-colon instead;
- (d) by inserting after paragraph (d) —

“

- (e) a submittable publication; or
- (f) a publication classified RC.

”.

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17. Section 96 amended

- (1) Section 96(1) is amended by inserting after “advertisement for a” —

“ classified publication or a ”.

- (2) Section 96(2) is amended as follows:

- (a) in paragraph (a) by inserting after “classification of the” —

“ publication or ”;

- (b) by deleting paragraph (b)(i) and the “and” following and inserting instead —

“

- (i) in the manner determined by the Director under section 8 of the Commonwealth Act; and

”.

- (3) Section 96(3) is repealed and the following subsection is inserted instead —

“

- (3) If —

- (a) a publication, film or computer game is reclassified under section 39 or 97A of the Commonwealth Act; or

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

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

”.

18. Section 97 amended

- (1) Section 97(1) is amended as follows:
- (a) by inserting after “an advertisement for” —
“ an unclassified publication or ”;
 - (b) by inserting after “suggests that the” —
“ publication, ”.
- (2) Section 97(2) is amended as follows:
- (a) by inserting after “an advertisement for” —
“ a classified publication or ”;
 - (b) by inserting after “suggests that the” —
“ publication, ”.
- (3) Section 97(3) is repealed and the following subsection is inserted instead —

“

- (3) If —
- (a) a publication, film or computer game is reclassified under section 39 or 97A of the Commonwealth Act; or
 - (b) the Board revokes a classification for a publication, film or computer game under section 22B(3) of that Act,

display of the determined markings applicable to the publication, film or computer game before that reclassification or revocation is sufficient compliance with subsection (2) for a period of 30 days after the decision to reclassify or revoke takes effect.

”.

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19. Section 97A inserted

After section 97 the following section is inserted —

“

97A. Advertising of sale of publications

- (1) A registered person may display in that person's registered premises a notice in the approved form that publications classified Category 1 restricted or Category 2 restricted are available for sale on those premises.
- (2) Except as provided in this section, a person must not in a public place publish or cause to be published anything likely to be understood as conveying that the person publishes or supplies publications classified Category 1 restricted or Category 2 restricted.
Penalty: \$5 000.
- (3) It is a defence to a charge of an offence under subsection (2) for the person charged to prove that the advertising is done in good faith solely for the purpose of so informing only persons, or the employees or agents of persons, whose business is or includes the sale of publications.
- (4) In subsection (1) —
“**approved form**” means a notice approved by the Minister.

”.

20. Section 98 amended

Section 98 is amended as follows:

- (a) by deleting “or” after paragraph (a);
- (b) by deleting the comma at the end of paragraph (b) and inserting instead —
“ ; or ”;

(c) by inserting after paragraph (b) the following paragraph —

“

(c) a publication classified Category 1 restricted or Category 2 restricted,

”;

(d) by inserting after “marking for” —

“ publications, ”.

21. Section 99 amended

Section 99 is amended in paragraph (a) of the definition of “objectionable material” by deleting “refused publication” and inserting instead —

“ publication classified RC ”.

22. Part 7A inserted

After Part 7 the following Part is inserted —

“

Part 7A — Call-in provisions

102A. Calling in submittable publications for classification

(1) If —

- (a) the Director or the Minister has reasonable grounds to believe that a publication is a submittable publication; and
- (b) the publication is being published in Western Australia, or the Director or the Minister has reasonable grounds to believe that it will be published in Western Australia,

the Director or the Minister may, by notice in writing given to the publisher of the publication, require the publisher to submit an application for classification of

the publication, or of subsequent issues of the publication, by the Board.

- (2) The Director must cause notice of his or her decision under subsection (1) to be published in the Commonwealth Gazette.
- (3) The Minister must cause notice of his or her decision under subsection (1) to be published in the *Government Gazette*.
- (4) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.
Penalty: \$10 000.
- (5) It is a defence to a prosecution for an offence against subsection (4) to prove that the defendant did not intend —
 - (a) to publish the publication in Western Australia; or
 - (b) to cause, authorise, permit or license the publication to be published in Western Australia.

102B. Calling in films for classification

- (1) If —
 - (a) the Director or the Minister has reasonable grounds to believe that an unclassified film is not an exempt film; and
 - (b) the film is being published in Western Australia, or the Director or the Minister has reasonable grounds to believe that it will be published in Western Australia,

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

- (2) The Director must cause notice of his or her decision under subsection (1) to be published in the *Commonwealth Gazette*.
- (3) The Minister must cause notice of his or her decision under subsection (1) to be published in the *Government Gazette*.
- (4) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.
Penalty: \$10 000.
- (5) It is a defence to a prosecution for an offence against subsection (4) to prove that the defendant did not intend —
 - (a) to publish the film in Western Australia; or
 - (b) to cause, authorise, permit or license the film to be published in Western Australia.

102C. Calling in computer games for classification

- (1) If —
 - (a) the Director or the Minister has reasonable grounds to believe that a computer game is likely to contain contentious material; and
 - (b) the computer game is being published in Western Australia, or the Director or the Minister has reasonable grounds to believe that it will be published in Western Australia,the Director or the Minister may, by notice in writing given to the publisher of the game, require the publisher to submit an application for classification of the game.

- (2) If —
- (a) the Director or the Minister has reasonable grounds to believe that a computer game is not an exempt computer game; and
 - (b) the computer game is being published in Western Australia, or the Director or the Minister has reasonable grounds to believe that it will be published in Western Australia,
- the Director or the Minister may, by notice in writing given to the publisher of the computer game, require the publisher to submit an application for classification of the computer game.
- (3) The Director must cause notice of his or her decision under subsection (1) or (2) to be published in the *Commonwealth Gazette*.
- (4) The Minister must cause notice of his or her decision under subsection (1) or (2) to be published in the *Government Gazette*.
- (5) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.
- Penalty: \$10 000.
- (6) It is a defence to a prosecution for an offence against subsection (5) to prove that the defendant did not intend —
- (a) to publish the computer game in Western Australia; or
 - (b) to cause, authorise, permit or license the computer game to be published in Western Australia.

102D. Calling in advertisements

- (1) The Director or the Minister may, by notice in writing given to —
 - (a) the publisher of a publication that —
 - (i) the Director or the Minister has reasonable grounds to believe is a submittable publication; and
 - (ii) is being published in Western Australia, or the Director or the Minister has reasonable grounds to believe will be published in Western Australia;
 - (b) the publisher of a classified film that is being published in Western Australia, or that the Director or the Minister has reasonable grounds to believe will be published in Western Australia; or
 - (c) the publisher of a computer game that is being published in Western Australia, or that the Director or the Minister has reasonable grounds to believe will be published in Western Australia,

require the publisher to submit to the Board for approval a copy of every advertisement used or intended to be used in connection with the publishing.
- (2) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.
Penalty: \$10 000.
- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the defendant did not intend —
 - (a) to publish the publication, film or computer game in Western Australia; or

- (b) to cause, authorise, permit or license the publication, film or computer game to be published in Western Australia.

102E. Calling in a publication, film or computer game for reclassification

- (1) If —
 - (a) the Board proposes to reclassify a publication, film or computer game under section 39 of the Commonwealth Act; and
 - (b) the publisher of the publication, film or computer game resides in Western Australia or has an office in Western Australia,

the Director or the Minister may, by notice in writing given to the publisher, require the publisher to submit a copy of the publication, film or computer game for the purpose of reclassifying it.

- (2) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.

Penalty: \$10 000.

- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the defendant did not have a copy of the publication, film or computer game.

102F. Obtaining copies for review

- (1) If —
 - (a) an application is made for a review of a classification decision under the Commonwealth Act by a person who is not the original applicant for classification of the publication, film or computer game concerned;

- (b) the Board or the Review Board does not have a copy of the publication, film or computer game and a copy is not available to it; and
- (c) the original applicant or the publisher of the publication, film or computer game resides in Western Australia or has an office in Western Australia,

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

- (2) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.

Penalty: \$10 000.

- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the defendant did not have a copy of the publication, film or computer game.

”.

23. Section 104 amended

Section 104(1)(e) is amended by deleting “censor, the appeal censor” and inserting instead —

“ Director ”.

24. Section 105 amended

Section 105(1) is amended as follows:

- (a) by deleting “censor” and inserting instead —
“ Director ”;
- (b) by inserting after “in relation to any” —
“ publication, ”.

25. Section 106 amended

Section 106(1) and (3) are each amended by deleting “censor” and inserting instead —

“ Director ”.

26. Section 107 amended

Section 107 is amended by deleting “censor” and inserting instead —

“ Director ”.

27. Section 108 amended

(1) Section 108(1) is amended as follows:

(a) by deleting “censor” and inserting instead —

“ Director ”;

(b) by deleting “appropriate *Gazette*” and inserting instead —

“ Commonwealth Gazette ”.

(2) Section 108(2), (5) and (6) are each amended by deleting “censor” and inserting instead —

“ Director ”.

28. Section 109 amended

(1) Section 109(1) is amended by deleting “censor” and inserting instead —

“ Director ”.

(2) Section 109(3) is amended by deleting “or censor”.

29. Section 110 amended

Section 110(c) is deleted and the following paragraph is inserted instead —

“

- (c) a submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC.

”.

30. Division heading inserted

After the heading to Part 9 the following Division heading is inserted —

“ **Division 1 — General matters** ”.

31. Section 116 amended

Section 116(1) is amended as follows:

- (a) in paragraph (a) by inserting after “classified” —

“

or the defendant, by notice under section 141A, agrees that the publication, film or computer game if classified would have been the classification agreed

”;

- (b) by deleting paragraph (b) and inserting instead —

“

- (b) may be commenced not later than 12 months after the date on which —
 - (i) the publication, film or computer game was classified; or
 - (ii) the defendant returned the notice under section 141A,whichever is relevant.

”.

32. Section 117 amended

- (1) After section 117(2) the following subsection is inserted —

“

- (2a) If —

- (a) a film classified RC or X;
- (b) a publication or computer game classified RC;
or
- (c) child pornography,

has been lawfully seized under this Part but at the expiration of 12 months after the seizure no person has been charged with an offence in relation to the seized thing, the thing is forfeited to the Crown.

”.

- (2) Section 117(3) is amended by inserting after “a thing” —

“

, other than a thing referred to in subsection (2a)(a), (b) or (c) or section 117A(1),

”.

- (3) Section 117(7) is amended by deleting “ordered to be forfeited under this section” and inserting instead —

“ forfeited to the Crown under this Act ”.

33. Sections 117A and 117B inserted

After section 117 the following sections are inserted —

“

117A. Forfeiture of copies of seized publications, films and computer games

- (1) Subject to the making of an order under subsection (7), if —
 - (a) proceedings are commenced for an offence under section 61, 62, 63(1), 73, 81(1) or (2),

84(1) or 89(1) in relation to 10 or more different products (“**the seized products**”); and

- (b) the seized products were seized on the same day from the same premises,

then —

- (c) any other copies of the seized products seized on that day from those premises (“**the seized copies**”) may be retained by the Crown until the proceedings referred to in paragraph (a) are finished; and
 - (d) if 10 or more of the seized products are forfeited to the Crown as a result of those proceedings, all of the seized copies of those products not the subject of those proceedings are, at the expiry of the prescribed period, also forfeited to the Crown.
- (2) If the owner of any seized copies of products liable to forfeiture under subsection (1)(d) makes a written request to the Commissioner of Police within 2 months after 10 or more seized products are forfeited to the Crown as a result of proceedings referred to in subsection (1)(a), that person must be allowed to view the seized copies at a time and place fixed by the Commissioner of Police.
 - (3) The owner of any seized copy liable to forfeiture under subsection (1)(d) may, within the prescribed period, apply to a justice for an order for return of the seized copy.
 - (4) An applicant for an order under this section must give notice of the application to the Commissioner of Police.
 - (5) The Commissioner of Police is a party to any proceedings for an order under this section.

- (6) If an application is made for an order under this section, the seized copies may be retained by the Crown until the application is determined but the operation of subsection (1)(d) is suspended until the application is determined.
- (7) The justice may, on an application under this section, order that a seized copy to which the application relates be returned to its owner if satisfied, on the balance of probabilities, that —
- (a) in the case of a publication, the publication is not a submittable publication or is classified with a classification other than RC;
 - (b) in the case of a film, the film is classified with a classification other than X or RC;
 - (c) in the case of a computer game, the computer game is classified with a classification other than RC; and
 - (d) an offence under section 61, 62, 63(1), 73, 81(1) or (2), 84(1) or 89(1) was not committed in relation to the publication, film or computer game.
- (8) In this section —
- “prescribed period”** means —
- (a) 2 months after the date on which 10 or more of the products seized on the same day from the same premises are forfeited to the Crown as a result of proceedings referred to in subsection (1)(a); or
 - (b) if the owner requests permission to view the seized products, 2 months from the time fixed by the Commissioner of Police for the viewing;

“products” means publications, films or computer games, and includes a combination of such products.

- (9) For the purposes of this section —
- (a) copies of the same publication, film or computer game do not constitute different products; and
 - (b) a publication, film or computer game is taken to be a copy of a product if —
 - (i) it is in the same form and has the same cover and identifying markings as the product; or
 - (ii) on a viewing, it is substantially the same as the product.

117B. Classification of seized items at request of defendant

- (1) If —
- (a) a publication, film or computer game has been seized under this Act and is in the possession or control of the prosecution; and
 - (b) the owner of the publication, film or computer game, or a person charged with an offence relating to the publication, film or computer game, wishes to submit an application for classification of the publication, film or computer game,
- the prosecution must, at the request of the person, forward the person’s application with the publication, film or computer game, or a copy of the publication, film or computer game to the Board on behalf of the person.
- (2) Despite subsection (1), the prosecution may refuse to forward the application until all fees payable to the Board for the classification and the postage costs

associated with the application are given to the prosecution.

”.

34. Part 9 Division 2 inserted

Before the heading to Part 10 the following Division is inserted —

“

Division 2 — Infringement notices

117C. Infringement notices

In this Division —

“**designated person**” in section 117D, 117E, 117F or 117G means a person appointed under section 117J to be a designated person for the purposes of the section in which the term is used.

117D. Giving of infringement notice

A member of the police force or a designated person who has reason to believe that a person has committed a prescribed offence under this Act may, within 35 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

117E. Content of infringement notice

- (1) An infringement notice is to be in the prescribed form and is to —
 - (a) contain a description of the alleged offence;
 - (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to

a designated person within a period of 28 days after the giving of the notice; and

- (c) inform the alleged offender as to who are designated persons for the purposes of receiving payment of modified penalties.
- (2) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
- (3) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

117F. Extension of time

A designated person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

117G. Withdrawal of infringement notice

- (1) A designated person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

117H. Benefit of paying modified penalty

- (1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.
- (2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

117I. Application of penalties collected

An amount paid as a modified penalty is, subject to section 117G(2), to be dealt with as if it were a penalty imposed by a court as a penalty for an offence.

117J. Appointment of designated persons

- (1) The Minister may, in writing, appoint persons or classes of persons to be designated persons for the purposes of section 117D, 117E, 117F or 117G or for the purposes of 2 or more of those sections.
- (2) Without limiting subsection (1), the Minister may appoint, under that subsection, persons or classes of persons appointed under the *Public Service Act 1999* of the Commonwealth, or an Act enacted in substitution for that Act, to be designated persons for the purposes of section 117D.

- (3) A person who is authorised to give infringement notices under section 117D is not eligible to be a designated person for the purposes of any of the other sections.

”.

35. Part 10 repealed

Part 10 is repealed.

36. Section 128A inserted

After the heading to Part 11 the following section is inserted —

“

128A. Registrar

- (1) The Minister is to appoint a person employed under Part 3 of the *Public Sector Management Act 1994* to be the Censorship Registrar.
- (2) A person may hold the office of Registrar in conjunction with any other office in the Public Service.
- (3) The Registrar has the functions that are conferred by this Act.

”.

37. Section 129 amended

Section 129 is amended by deleting “restricted publications” and inserting instead —

“

publications classified Category 1 restricted or
Category 2 restricted, or both

”.

38. Section 141 replaced by sections 141 and 141A

Section 141 is repealed and the following sections are inserted instead —

“

141. Evidence

In proceedings for an offence, a certificate signed or purporting to be signed, by the Director or Deputy Director and stating that —

- (a) a film, publication or computer game is classified as specified in the certificate and, if the case requires, the determined markings for that type of classification are as specified in the certificate;
- (b) a classified film or a classified computer game specified in the certificate is modified in a manner specified in the certificate;
- (c) a publication, film or computer game is not classified, or is not classified at a classification specified in the certificate; or
- (d) an advertisement described in the certificate is approved or has been refused approval or has not been approved,

is evidence of, and in the absence of evidence to the contrary is proof of, the facts stated in the certificate.

141A. Proof of classification by agreement

- (1) Subject to subsection (2), if a person is charged with an offence against this Act, the prosecution may, prior to the trial, give the defendant a notice —
 - (a) setting out —
 - (i) the title or apparent title (if any) of the publication, film or computer game; and

- (ii) particulars of the offence in relation to which the notice is served;
- (b) stating that the defendant is entitled to view the publication, film or computer game;
- (c) inviting the defendant to indicate, by completing and signing a statement to that effect set out in the notice and returning the notice to an address set out in the notice, that the defendant agrees that, on a specified date, the publication, film or computer game —
 - (i) was classified at the specified classification;
 - (ii) was unclassified but would, if classified, have been of the specified classification; or
 - (iii) was unclassified,as the case may require; and
- (d) stating that if the defendant does not indicate his or her agreement in accordance with paragraph (c) within the period specified in the notice (being not less than the prescribed period), the defendant will, if found guilty of the offence specified in the notice, be liable to pay an amount equal to —
 - (i) if the offence in relation to which the notice is served involves an allegation that on a specified date, a publication, film or computer game was unclassified but would, if classified, have been of a particular classification — the fee for classification of the publication, film or computer game; or

- (ii) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a publication, film or computer game was classified at a particular classification or was unclassified — the fee for obtaining a certificate of a kind described in section 141 specifying the classification of the publication, film or computer game at that date or stating that the publication, film or computer game was unclassified at that date.
- (2) This section does not apply where the offence with which a person is charged involves an allegation that a publication, film or computer game was unclassified but would, if classified, be classified at a classification other than X or RC.
- (3) A person served with a notice under this section must, on making a written request to the prosecution within 14 days from the date of service of the notice, be allowed to view the publication, film or computer game the subject of the notice at a time and place fixed by the prosecution.
- (4) In proceedings for an offence against this Act, a notice under this section containing a statement, completed and signed by the defendant, that the defendant agrees that, on a specified date, the publication, film or computer game —
 - (a) was classified at the specified classification;
 - (b) was unclassified but would, if classified, have been of a specified classification; or
 - (c) was unclassified,is evidence of, and in the absence of evidence to the contrary is proof, of the matter agreed.

(5) If —

- (a) a person served with a notice under this section does not deliver the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice; and
- (b) the person is found guilty of the offence specified in the notice,

the prosecution is entitled, on application to the court making the finding of guilt, to recover from the person an amount equal to the fee described in the notice.

(6) In proceedings in which an application referred to in subsection (5) is made, a certificate signed or purporting to be signed by the Commissioner of Police and stating that —

- (a) a person was served with a notice set out in the certificate and did not return the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice; and
- (b) that a specified amount was paid as the fee described in the notice,

is evidence of, and in the absence of evidence to the contrary is proof of, the facts stated in the certificate.

(7) If —

- (a) a notice is served under this section in relation to an offence involving an allegation that a publication, film or computer game was unclassified but would, if classified, have been of a specified classification;
- (b) the person served with the notice does not return the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice; and

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- (c) the publication, film or computer game is subsequently classified at a higher classification than the classification specified in the notice,

this section applies as if the notice had specified that higher classification.

- (8) In this section —

“prescribed period” means 14 days from the date of service of the notice or, if the person served with the notice requests that he or she be allowed to view the publication, film or computer game the subject of the notice, 14 days from the time fixed by the prosecution for the viewing.

”.

39. Various references to “Secretary” amended

In each place listed in the Table to this section “Secretary” is deleted and the following is inserted instead —

“ Registrar ”.

Table

section 114(a) and (b)	section 133(1)
section 117(7) and (8)	section 134(2), (3) (twice), (4) (twice), (5) (twice)
section 129(1), (2) and (3) (twice)	section 135(1), (2), (3), (4), (5)
section 130(2) (twice) and (3) (twice)	section 136
section 131(1)(e) and (2) (twice)	section 142(1)(d)
section 132 (twice)	

40. Provisions repealed

The provisions set out in the Table to this section are repealed.

Table

section 67(2)	section 139
section 75(2)	section 142(1)(b), (c), (e)
section 83(2)	and (f)
section 137	Schedule 1
section 138	

41. Various penalties amended

- (1) Each of the provisions listed in column 1 of the Table is repealed and the provision listed in column 2 opposite the repealed provision is inserted instead —

Column 1	Column 2
section 59(7)	(7) A person who contravenes subsection (1) or (3) commits an offence and is liable to a penalty of \$10 000.
section 59(8)	(8) A person who contravenes subsection (2), (4), (5) or (6) commits an offence and is liable to a penalty of \$5 000.

- (2) The penalty at the foot of the provision listed in column 1 is deleted and the penalty listed in column 2 opposite that provision is inserted instead —

Column 1	Column 2
section 66	Penalty: \$10 000.
section 67(1)	Penalty: \$1 000.
section 68	Penalty: \$15 000 or imprisonment for 18 months.
section 69(1)	Penalty: \$10 000.
section 69(2)	Penalty: \$5 000.
section 69(3)	Penalty: \$5 000.

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Column 1	Column 2
section 70(1)	Penalty: \$2 000.
section 70(3)	Penalty: \$2 000.
section 71(1)	Penalty: \$5 000.
section 71(3)	Penalty: \$5 000.
section 72(1)	Penalty: \$1 000.
section 73	Penalty: \$15 000 or imprisonment for 18 months.
section 74	Penalty: \$10 000.
section 75(1)	Penalty: \$1 000.
section 76(1)	Penalty: \$5 000.
section 76(2)	Penalty: \$5 000.
section 76(3)	Penalty: \$5 000.
section 77(1)	Penalty: \$5 000.
section 79(1)	Penalty: \$5 000.
section 79(4)	Penalty: \$2 000.
section 80	Penalty: \$5 000.
section 81(1)	Penalty: \$10 000.
section 81(2)	Penalty: \$10 000.
section 82	Penalty: \$10 000.
section 83	Penalty: \$1 000.
section 84(1)	Penalty: \$15 000 or imprisonment for 18 months.
section 85(1)	Penalty: \$5 000.
section 85(2)	Penalty: \$2 000.
section 85(3)	Penalty: \$2 000.
section 86(1)	Penalty: \$5 000.
section 86(2)	Penalty: \$5 000.
section 86(3)	Penalty: \$5 000.
section 87(1)	Penalty: \$5 000.
section 88(1)	Penalty: \$5 000.
section 89(1)	Penalty: \$10 000.

Column 1	Column 2
section 89(2)	Penalty: \$10 000.
section 89(3)	Penalty: \$5 000.
section 90(1)	Penalty: \$5 000.
section 91(1)	Penalty: \$5 000.
section 92	Penalty: \$2 000.
section 93(1)	Penalty: \$2 000.
section 94	Penalty: \$2 000.
section 95	Penalty: \$2 000.
section 96(1)	Penalty: \$2 000.
section 97(1)	Penalty: \$2 000.
section 97(2)	Penalty: \$2 000.
section 98	Penalty: \$2 000.
section 101(1)	Penalty: \$15 000 or imprisonment for 18 months.
section 102(1)	Penalty: \$5 000.
section 102(2)	Penalty: \$5 000.

Part 3 — Other amendments, transitional and savings provisions

42. *The Criminal Code* amended

Section 204A(1) of *The Criminal Code** is amended in the definition of “offensive material” by deleting paragraphs (e), (f) and (g) and inserting instead —

“

- (e) a publication, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, that has been classified RC, Category 1 restricted or Category 2 restricted under that Act;
- (f) a film, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, that has been classified RC or X under that Act; and
- (g) a computer game, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, that has been classified RC under that Act.

”.

[* *Reprinted as at 9 February 2001 as the Schedule to the Criminal Code Act 1913 appearing in Appendix B to the Criminal Code Compilation Act 1913. For subsequent amendments see Act No 23 of 2001.*]

43. Constitution Acts Amendment Act 1899 amended

Schedule V Part 3 of the *Constitution Acts Amendment Act 1899** is amended by deleting “The Censorship Advisory Committee established under the *Censorship Act 1996*.”.

[* Reprinted as at 8 June 2001

For subsequent amendments see Acts Nos. 76 of 2000 and 12 of 2001.]

44. Co-operative Schemes (Administrative Actions) Act 2001 amended

(1) The amendments in this section are to the *Co-operative Schemes (Administrative Actions) Act 2001*.

(2) Section 3 is amended after paragraph (a) in the definition of “commencement time” by deleting “or” and inserting —

“

(aa) in relation to the *Censorship Act 1996* — the time when section 43 of the *Censorship Amendment Act 2003* comes into operation; or

”.

(3) After section 4(1)(a) the following paragraph is inserted —

“

(aa) the *Censorship Act 1996*;

”.

45. Transitional and savings provisions: publications

(1) A publication that —

(a) has been classified Unrestricted under the *Censorship Act 1996*; and

(b) has not been classified under the Commonwealth Act,

is taken to have been classified Unrestricted under the Commonwealth Act until it is classified under that Act.

- (2) A publication that —
- (a) has been classified restricted under the *Censorship Act 1996*; and
 - (b) has not been classified under the Commonwealth Act,
- is taken to have been classified Category 2 restricted under the Commonwealth Act until it is classified under that Act.
- (3) A publication that —
- (a) has been classified refused under the *Censorship Act 1996*; and
 - (b) has not been classified under the Commonwealth Act,
- is taken to have been classified RC under the Commonwealth Act until it is classified under that Act.
- (4) If a publication —
- (a) is classified Category 1 restricted under the Commonwealth Act; or
 - (b) is classified Category 2 restricted under the Commonwealth Act, or is taken to be so classified under subsection (3) of this section,
- a person selling or supplying the publication is not required to comply with section 64(4) or 65(6) of the *Censorship Act 1996* as amended by this Act for a period of 90 days after the coming into operation of this Act.
- (5) A person who, immediately before the commencement of this section, is a registered person is taken, under and subject to the *Censorship Act 1996*, to be registered for the purpose of selling publications classified Category 1 restricted and Category 2 restricted.

46. Transitional and savings provisions: films and advertisements

- (1) A film that —
- (a) has been classified G, PG, M, MA, R, X or RC under the *Censorship Act 1996*; and
 - (b) has not been classified under the Commonwealth Act,
- is taken to have been so classified under the Commonwealth Act.
- (2) An advertisement for a film that, before the commencement of this section —
- (a) has been approved or refused approval under the *Censorship Act 1996*; and
 - (b) has not been approved or refused approval under the Commonwealth Act,
- is taken to have been so approved or refused approval under the Commonwealth Act.
- (3) If a certificate of exemption in respect of an unclassified film has been granted under the *Censorship Act 1996* and is in force, the certificate is taken to have been granted under section 33 of the Commonwealth Act.

47. Transitional and savings provisions: computer games

- (1) A computer game that —
- (a) has been classified G, G(8+), M(15+), MA(15+) or RC under the *Censorship Act 1996*; and
 - (b) has not been classified under the Commonwealth Act,
- is taken to have been so classified under the Commonwealth Act.

- (2) An advertisement for a computer game that —
- (a) has been approved or refused approval under the *Censorship Act 1996*; and
 - (b) has not been approved or refused approval under the Commonwealth Act,
- is taken to have been so approved or refused approval under the Commonwealth Act.
- (3) Section 86(4) and (5) of the *Censorship Act 1996*, as inserted by section 13 of this Act, apply to a computer game whether published before or after the commencement of section 13 of this Act.

48. Transitional: calling in, review and reclassification

- (1) Sections 102A, 102B, 102C and 102D of the *Censorship Act 1996*, as inserted by section 22 of this Act, only apply to —
- (a) a publication, film or computer game first published on or after the commencement of section 22 of this Act; or
 - (b) a publication, film or computer game for which an application for classification is made on or after that commencement.
- (2) Sections 102E and 102F of the *Censorship Act 1996*, as inserted by section 22 of this Act, apply to a publication, film or computer game whether published before or after the commencement of section 22 of this Act.

49. Transitional: offences

Section 141A of the *Censorship Act 1996* as amended by this Act applies in relation to proceedings for offences commenced after the commencement of section 38 of this Act whether the offences were committed before or after the commencement of section 38.



