

# CENSORSHIP ACT 1996

(No. 40 of 1996)

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WESTERN AUSTRALIA

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## **CENSORSHIP ACT 1996**

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**No. 40 of 1996**

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**AN ACT to provide for the classification of publications, films and computer games, restrictions on the publication and possession of publications, films and computer games and the use of computer services, the enforcement of those restrictions and for other purposes.**

*[Assented to 10 October 1996.]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Censorship Act 1996*.

### **Commencement**

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

### **Interpretation**

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

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

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

“**advertisement**” for a publication, film or a computer game means any form of advertising for the publication, film or computer game and includes —

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

**“appeal censor”** means —

- (a) the officer or authority of the Commonwealth exercising and discharging on behalf of the State the functions of an appeal censor under an agreement under section 126; or
- (b) where no such agreement is in force, the appeal censor appointed within the meaning of section 127;

**“appropriate *Gazette*”** means —

- (a) where an agreement is in force under section 126, the Commonwealth Gazette; or
- (b) where no such agreement is in force, the *Government Gazette*;

**“article”** includes —

- (a) a publication;
- (b) a film;
- (c) a computer programme and associated data;
- (d) a photograph;
- (e) an object;
- (f) a sound recording; and
- (g) an advertisement for any article;

**“authorized person”** means a person appointed under section 112 (1);

**“business day”** means a day other than a Saturday, a Sunday, or a public holiday;

**s. 3**

**“buy”** means buy or exchange or hire and includes offer to buy or exchange or hire, agree to buy, exchange or hire and cause or permit to be bought or exchanged or hired, whether by retail or wholesale;

**“censor”** means —

- (a) the officer or authority of the Commonwealth exercising and discharging on behalf of the State the functions of a censor pursuant to an agreement under section 126;
- (b) where no such agreement is in force, the censor appointed within the meaning of section 127;

**“child pornography”** means an article that describes or depicts, in a manner that is likely to cause offence to a reasonable adult, a person who is, or who looks like, a child under 16 years of age (whether the person is engaged in sexual activity or not);

**“classified”** means classified under this Act;

**“Code”** means the National Classification Code set out in the Schedule to the Commonwealth Act, or that Code as amended in accordance with section 6 of that Act;

**“Committee”** means the Censorship Advisory Committee established under section 118;

**“Commonwealth Act”** means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth;

**“Commonwealth Gazette”** means the Commonwealth of Australia Gazette;

**“Commonwealth Minister”** means the Minister of the Commonwealth administering the Commonwealth Act;

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

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

**“computer generated image”** means an image (including an image in the form of text) produced by use of a computer on a computer monitor, television screen, liquid crystal display or similar medium from electronically recorded data;

**“consumer advice”** in relation to a film or computer game means consumer advice determined by the censor to consumers about the contents of the film or computer game;

**“contentious material”**, in relation to a computer game, means material in the computer game that a reasonable adult would consider unsuitable for viewing or playing by a person under 15 years of age;

**“decision”**, in relation to a film or computer game or an advertisement for a film or computer game, means a decision of the censor —

- (a) to classify or refuse to classify, a film or a computer game;
- (b) to determine the consumer advice that will apply to a film or a computer game;

**s. 3**

- (c) to approve or refuse to approve an advertisement for a film or a computer game or to impose conditions on such an approval;
- (d) to grant a certificate of exemption for a film; or
- (e) to decline to deal with or to deal further with an application under this Act,

and includes a decision of the censor under section 50;

**“demonstrate”** includes exhibit, display, screen, play or make available for playing;

**“determined markings”** means markings determined by the censor under section 22;

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

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

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

**“interactive game”** means a game in which the way the game proceeds and the result achieved at various stages of the game is determined in response to the decisions, inputs and direct involvement of the player;

“**member**” means member of the Committee and includes a person acting under clause 3 of Schedule 1;

“**minor**” means a person who is under 18 years of age;

“**place**” means any land, building, structure, tent, aircraft, vehicle or vessel, or a part of any land, building, structure, tent, aircraft, vehicle or vessel ;

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

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

“**public place**” includes —

- (a) a place to which free access is allowed to the public with the express or implied approval of the owner or occupier of that place;
- (b) a place to which the public are admitted on payment of consideration;
- (c) a place on private property that the public are allowed to use as a thoroughfare for pedestrians or vehicles, or both;
- (d) a public place covered by water; and
- (e) a school;

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

“**refused publication**” means any publication classified as refused;

**s. 3**

**“registered person”** means a person registered under section 129;

**“registered premises”** means premises registered under section 130;

**“relevant Minister”** means —

- (a) where an agreement is in force under section 126, the Commonwealth Minister; or
- (b) where no such agreement is in force, the Minister;

**“restricted publication”** means any publication classified as restricted;

**“Secretary”** means the Secretary to the Committee appointed under section 124;

**“sell”** includes —

- (a) sell, whether by retail or wholesale;
- (b) let on hire;
- (c) expose for sale or hire;
- (d) distribute for sale or letting on hire;
- (e) offer or agree to do an act mentioned in paragraphs (a) to (d); and
- (f) cause or permit to be done an act mentioned in paragraphs (a) to (e);

**“sound recording”** includes a gramophone record, wire, disc, recording tape or other device or thing by or on which words or sounds are recorded and from which they are capable of being reproduced;

“**work**” means a cinematic composition that —

- (a) appears to be self-contained; and
  - (b) is produced for viewing as a discrete entity,
- but does not include an advertisement.

#### **Exhibition of film**

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

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

#### **Sound recordings**

5. For the purposes of this Act —

- (a) a sound recording is taken to be indecent or obscene if the words or sounds capable of being reproduced from the sound recording are indecent or obscene; and
- (b) publication, in the case of a sound recording, includes the supply of the sound recording to any person or the playing of the sound recording in the hearing of any person.

#### **Application**

6. This Act does not apply to radio or television broadcasting services to which the *Broadcasting Services Act 1992* of the Commonwealth applies.

**PART 2 — CLASSIFICATION OF PUBLICATIONS****Types of classification**

7. Publications may be given one of the following classifications —

- (a) Unrestricted;
- (b) Restricted;
- (c) Refused.

**Matters to be considered in classification**

8. The matters to be taken into account in making a decision on the classification of a publication include —

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults;
- (b) the literary, artistic or educational merit (if any) of the publication;
- (c) the general character of the publication, including whether it is of a medical, legal or scientific character; and
- (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.

**Restricted publications**

9. A publication will be classified as restricted if, in the opinion of the Minister, by reason of the nature or extent of references in the publication to matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena, or for any other reason, it is unsuitable reading for a minor.

**Refused publications**

**10.** A publication will be classified as refused if, in the opinion of the Minister, the publication —

- (a) is child pornography;
- (b) promotes crime or violence, or incites or instructs in matters of crime or violence; or
- (c) describes or depicts, in a manner that is likely to cause offence to a reasonable adult —
  - (i) the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct;
  - (ii) sexual conduct with or upon the body of a dead person;
  - (iii) the use of urine or excrement in association with degrading or dehumanizing conduct or sexual conduct;
  - (iv) bestiality;
  - (v) acts of torture or the infliction of extreme violence or extreme cruelty; or
  - (vi) an act or matter that the Minister has determined, having regard to the standards of morality, decency and propriety generally accepted by reasonable adults, is contrary to the public interest.

**Referral to Committee**

**11.** (1) The Minister or a publisher of publications, may refer any publication to the Committee for it to consider the

publication with the object of reporting to the Minister whether or not in the Committee's opinion the publication —

- (a) should be classified as unrestricted;
- (b) should be classified as restricted; or
- (c) should be classified as refused.

(2) A referral, other than a referral by the Minister, under subsection (1) must be accompanied by —

- (a) a written application for consideration signed by or on behalf of the person referring the publication; and
- (b) a copy of the publication.

**Minister may require publication to be referred**

**12.** (1) If a publication is being published in the State or the Minister has reasonable grounds to believe that it will be published in the State, the Minister may, by notice in writing given to the publisher of a publication, require that person to refer the publication, and, if the Minister so specifies, subsequent issues of the publication, to the Committee for a report as to classification.

(2) The Minister may revoke a notice given under subsection (1) insofar as it applies to subsequent issues of a publication.

(3) A person to whom a notice under this section is given must —

- (a) in the case of a requirement to refer a publication, within 3 business days after receiving the notice, comply with the notice; and

- (b) in the case of a requirement to refer a subsequent issue of a publication, as soon as is practicable, comply with the notice.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(4) It is a defence to a charge of an offence under subsection (3) for a person charged to prove that the person did not intend to —

- (a) publish the publication in the State; or
- (b) cause, authorize, permit or license the publication to be published in the State.

**Minister may require publication to be translated**

**13.** (1) The Minister may, by notice in writing given to the publisher of a publication that is written in a language other than English, require the publisher to provide to the Minister —

- (a) a translation into English of the publication, and, if the Minister so specifies, of subsequent issues of the publication; and
- (b) a declaration by the translator to the effect that the translation accurately reproduces in English the contents of the original publication.

(2) The Minister may revoke a notice given under subsection (1) insofar as it applies to subsequent issues of a publication.

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(3) The costs of a translation under subsection (1) are to be met by the publisher to whom the notice is given.

(4) A publisher to whom a notice under this section is given must —

- (a) in the case of a requirement to translate a publication, within 28 business days after receiving the notice, comply with the notice; and
- (b) in the case of a requirement to translate a subsequent issue of a publication, as soon as is practicable, comply with the notice.

Penalty:

- (a) in the case of an individual, \$1 000;
- (b) in any other case, \$5 000.

**Committee may seek assistance**

**14.** The Committee may —

- (a) show a publication referred to it to any person whom it considers may be able to assist it in forming an opinion of the publication on which to base its report in respect of the publication;
- (b) invite such persons as it thinks fit to make written submissions to the Committee in relation to the publication; and
- (c) obtain information from such persons, and make such inquiries as it thinks fit, in relation to the publication.

**Classification by Minister**

- 15.** (1) The Minister may classify a publication —
- (a) after considering a report of the Committee as to classification of the publication; or
  - (b) on the Minister's own initiative, without requiring the publication to be referred to the Committee.
- (2) The classification of a publication, if the Minister so decides, extends not only to the publication specified in the decision but to all subsequent editions, series, numbers or issues of that publication.
- (3) A classification referred to in subsection (2) applies notwithstanding any reconstruction (whether by way of alteration in title, change of subject, characters, story or other features or otherwise) of such publication, and any such subsequent editions, series, numbers or issues have the same classification as the original publication.
- (4) If under this section the Minister has classified a publication, proceedings may be instituted under Division 1 of Part 7 in respect of any subsequent edition, series, number or issue of that publication notwithstanding that the decision so made by the Minister is still in force and applies to that subsequent edition, series, number or issue.

**Classification certificates**

- 16.** (1) The Secretary must issue a classification certificate for each publication classified under this Part.
- (2) A classification certificate must include —
- (a) the title of the publication;
  - (b) the classification given to the publication; and
  - (c) the date on which the publication was classified.

**Minister may reclassify or revoke classification**

17. The Minister may reclassify a publication or revoke the classification of a publication at any time after the publication is classified.

**Notice of decision**

18. The Secretary must cause notice of any decision or of any variation or revocation of any decision as to classification of a publication to be published in the *Government Gazette* and the decision or any variation or revocation of the decision does not take effect until the notice is so published.

**Appeal**

19. (1) A person aggrieved by a decision of the Minister under this Part as to classification of a publication may appeal to the District Court against that decision within 28 days after it is made.

(2) If, at the hearing of an appeal made under subsection (1), the person aggrieved satisfies the District Court that the publication is not appropriately classified, the District Court may order that the publication be classified as specified in the order and upon the making of that order the publication is so classified.

(3) The procedure of the District Court in relation to an appeal made under this section is to be as prescribed by the rules of court, or in the absence of those rules, as the court determines, and at the hearing of any appeal the District Court may make such order as to costs as it thinks fit.

(4) In this section —

“**person aggrieved**” means an author or publisher of the publication to which the appeal relates.

**Refused publications to be disposed of**

**20.** (1) Where a publication in respect of which an application for classification has been made is classified by the Minister or the District Court as a refused publication —

- (a) the publication shall be returned to the person who applied for classification; and
- (b) the Minister or the District Court must give a direction to that person as to the manner in which, and the time within which, the publication is to be disposed of.

(2) The Minister or District Court must not direct that a publication is to be disposed of before the expiration of the time allowed for instituting an appeal against the decision as to classification of the publication or, if an appeal is lodged within that time, before the determination of the appeal.

**PART 3 — CLASSIFICATION OF FILMS AND  
COMPUTER GAMES**

**Types of classifications**

**21.** (1) The following are the different types of classifications for films in ascending order —

**G** (General)

**PG** (Parental Guidance)

**M** (Mature)

**MA** (Mature Accompanied)

**R** (Restricted)

**X** (Restricted)

**RC** (Refused Classification).

(2) The following are the different types of classifications for computer games in ascending order —

**G** (General)

**G (8+)** (General)

**M (15+)** (Mature)

**MA (15+)** (Mature Restricted)

**RC** (Refused Classification).

**Markings for classifications**

**22.** The censor may, by notice in the appropriate *Gazette*, determine —

- (a) markings for each type of classification giving information about the classification; and
- (b) the manner in which the markings are to be displayed.

**Classification in accordance with the Code and guidelines**

**23.** (1) If an agreement is in force under section 126, films and computer games are to be classified in accordance with the Code and the classification guidelines referred to in section 12 of the Commonwealth Act.

(2) If no agreement is in force under section 126, the Minister may —

- (a) determine that films and computer games are to be classified in accordance with the Code and the classification guidelines referred to in section 12 of the Commonwealth Act; or
- (b) determine guidelines to assist the censor.

(3) The Minister must cause a copy of guidelines determined under subsection (2) (b) to be published in the *Government Gazette*.

(4) The Minister may amend guidelines determined under subsection (2) (b).

(5) If guidelines determined under subsection (2) (b) are amended, the Minister must cause a copy of the amended guidelines to be published in the *Government Gazette*.

**Matters to be considered in classification**

**24.** The matters to be taken into account in making a decision on the classification of a film or computer game include —

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults;
- (b) the literary, artistic or educational merit (if any) of the film or computer game;
- (c) the general character of the film or computer game, including whether it is of a medical, legal or scientific character; and
- (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.

**Applications for classification of films**

**25.** (1) An application for classification of a film must be —

- (a) in writing;
- (b) in a form approved by the censor in writing;
- (c) signed by or on behalf of the applicant; and
- (d) accompanied by —
  - (i) the prescribed fee for that category of film; and
  - (ii) an adequate written synopsis of the film in English that includes a statement or summary of any incidents, or of the plot, depicted or intended to be depicted by the film.

(2) An application for classification of a film may be accompanied by a copy of any advertisement that is proposed to be used to advertise the film.

(3) Separate applications must be made for a version of a film that is for public exhibition and a version of the film that is for sale or hire.

**Discretion of censor**

**26.** (1) If —

- (a) an application is made for the classification as a film of a recording that contains a computer generated image; and
- (b) the censor is of the opinion that the recording is more appropriately dealt with as a computer game having regard to —
  - (i) the definition of “computer game” in section 3;
  - (ii) the degree of interactivity involved; and
  - (iii) the nature of the visual images produced,

the censor must decline to deal with the application.

(2) If the censor declines to deal with the application under this section, the censor must, within 14 days after the decision is made —

- (a) notify the applicant in writing of the decision and of the reason for the decision; and
- (b) invite the applicant to provide the additional material that is necessary for an application for classification of a computer game.

(3) After receiving the material and any additional fees required, the censor must deal with the application as an application for classification of a computer game.

### **Prescribed fees for certain films**

**27.** (1) If, in the censor's opinion, a film comprises more than one work and runs for more than 90 minutes, the prescribed fee for the film is payable for each 90 minutes, or part of 90 minutes, of the length of the film.

(2) If the censor makes a decision under this section, the censor must, within 28 days after making the decision, notify in writing the person by whom the fee is payable of the decision and of the reasons for the decision.

### **Applications for classification of computer games**

**28.** (1) An application for classification of a computer game must be —

- (a) in writing;
- (b) in a form approved by the censor in writing;
- (c) signed by or on behalf of the applicant;
- (d) accompanied by the prescribed fee for that category of game; and
- (e) accompanied by a document setting out —
  - (i) the title of the game;
  - (ii) the year of the production;
  - (iii) the name of the publisher;

(iv) the country of origin; and

(v) a description of game play.

(2) If any game play is likely to be regarded as containing contentious material, the application must also be accompanied by a video tape recording of the game play.

(3) If the applicant is of the opinion that the game would, if classified, be classified G, G (8+) or M (15+), the applicant may also submit with the application —

(a) an assessment of the computer game, signed by or on behalf of the applicant and prepared by a person authorized by the censor for the purpose, including —

(i) a recommended classification of the game; and

(ii) consumer advice appropriate to the game;

and

(b) a copy of any advertisement that is proposed to be used to advertise the game.

(4) If the censor disagrees with the recommended classification, the censor must give a notice in writing to the applicant —

(a) stating the particulars of the disagreement; and

(b) inviting the applicant to make, within 14 days after receiving the notice, any additional submissions the applicant may wish to make before the censor makes a decision on the application.

(5) The censor may authorize a person for the purpose of subsection (3) only if the person has completed training by the Office of Film and Literature Classification of the Commonwealth in the making of assessments.

**Considered form of film or computer game to be final**

**29.** (1) The censor must assume, in classifying a film or computer game, that the film or game will be provided only in the form in which it is considered for classification.

(2) A classification approved by the censor for a film is taken to be the classification for each work comprised in the film.

**Screening of films and demonstration of computer games before classification**

**30.** (1) The censor may decline to deal with an application for classification of a film or a computer game, or decline to deal further with the application unless —

- (a) the applicant publishes a copy of the film or game for screening or demonstration before the censor; and
- (b) in the censor's opinion, the copy of the film or game published is complete and is adequate to allow a proper consideration of the application.

(2) The censor may decline to deal with an application for classification of a computer game, or decline to deal further with the application, unless the applicant demonstrates the computer game before the censor.

(3) The censor must notify the applicant in writing of a decision under subsection (1) or (2).

(4) The applicant and not more than 4 representatives of the applicant, and any other persons approved by the censor, are entitled to be present at a screening or demonstration.

(5) A screening or demonstration must take place at a reasonable time and place specified by the censor.

(6) The censor may keep the copy of the film or computer game or, if the censor and the applicant agree, another copy of the film or computer game, for as long as the censor requires.

(7) Neither the Crown nor the censor is liable for any damage caused to a copy of a film or a computer game as a result of a screening or demonstration.

**Censor to decide consumer advice for films and computer games**

**31.** (1) If the censor —

(a) classifies a film PG, M, MA, R or X; or

(b) classifies a computer game G, G (8+), M (15+) or MA (15+),

the censor must determine consumer advice giving information about the content of the film or game.

(2) If the censor classifies a film G, the censor may determine consumer advice giving information about the content of the film.

**Declassification of classified films or computer games**

**32.** (1) Subject to subsection (2), if a classified film or a classified computer game is modified, it becomes unclassified when the modification is made.

(2) Subsection (1) does not apply to a modification that consists of including an advertisement, other than an advertisement to which section 33 applies.

(3) If a classified computer game is found to contain contentious material (whether available through use of a code or otherwise) that was not brought to the attention of the censor before the classification was made, it is to be taken as never having been classified.

**s. 33****Classification of films or computer games containing advertisements**

**33.** A film or computer game must not be classified if it contains —

- (a) an advertisement for a film or computer game that has not been classified; or
- (b) an advertisement for a film or computer game that has a higher classification.

**Calling in computer games for classification**

**34.** (1) If —

- (a) the censor has reasonable grounds to believe that a computer game is likely to contain contentious material; and
- (b) the computer game is being published in the State, or the censor has reasonable grounds to believe that it will be published in the State,

the censor 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) The censor must cause notice of a decision under subsection (1) to be published in the appropriate *Gazette*.

(3) 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:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(4) It is a defence to a charge of an offence under subsection (3) for a person charged to prove that the person did not intend to —

- (a) publish the computer game in the State; or
- (b) cause, authorize, permit or license the computer game to be published in the State.

### **Classifications in writing etc.**

**35.** (1) Classifications of films and computer games are to be made by the censor in writing on application.

(2) Subsection (1) does not require an application for a reclassification under section 50 (2).

### **Classification certificates**

**36.** (1) The censor must issue a classification certificate for each film and computer game that is classified by the censor.

(2) A classification certificate must include —

- (a) the determined markings for the classification given to the film or computer game;
- (b) any consumer advice for the film or computer game; and
- (c) the applicant's obligations about the display of the determined markings and consumer advice.

### **Notice of decisions**

**37.** (1) The censor must give written notice of a decision of the censor to the applicant.

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(2) If there was no applicant, or the applicant is not the person on whose application an earlier decision was made, the censor must give the notice to the persons who, in the censor's opinion, have an interest in the matter, whether as a publisher of the film or computer game or otherwise.

(3) The notice must be given as soon as practicable, but not later than 30 days after the decision.

(4) A copy of the classification certificate issued under section 36 is sufficient notice of the decision.

**Applications for information**

**38.** (1) A person may apply to the censor for a copy of a classification certificate issued under section 36 or of a notice under section 37.

(2) If the applicant pays the prescribed fee, the censor must give the copy to the applicant.

**When decisions take effect**

**39.** A decision takes effect on the day on which notice of the decision is given under section 37.

**PART 4 — APPROVAL OF FILM AND COMPUTER  
GAME ADVERTISEMENTS**

***Division 1 — Approval of advertisements***

**Approval of advertisements**

**40.** (1) The censor may approve or refuse to approve an advertisement for a film or computer game either on application for approval or on the initiative of the censor.

(2) An approval of an advertisement may be subject to conditions.

(3) An application for approval of an advertisement must be —

- (a) in writing;
- (b) in a form approved by the censor in writing;
- (c) signed by or on behalf of the applicant; and
- (d) accompanied by the prescribed fee for that category of advertisement.

(4) The matters to be taken into account in deciding whether to approve an advertisement include the matters set out in section 24 and the guidelines applicable under section 23.

(5) The censor must refuse to approve an advertisement if, in the opinion of the censor, the advertisement —

- (a) describes, depicts or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that it offends against the standards of morality, decency and propriety generally accepted by

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reasonable adults to the extent that it should not be approved under this section ;

- (b) is child pornography;
- (c) promotes crime or violence, or incites or instructs in matters of crime or violence; or
- (d) is used, or is likely to be used, in a way that is offensive to a reasonable adult.

(6) The censor must refuse to approve an advertisement for a film that —

- (a) has been classified X or RC; or
- (b) has not been classified.

(7) Subsection (6) (b) does not apply to a film for which a certificate of exemption is in force under section 44.

(8) The censor must refuse to approve an advertisement for a computer game that —

- (a) has been classified RC; or
- (b) has not been classified.

**Calling in advertisements**

**41.** (1) The censor may, by notice in writing given to —

- (a) the publisher of a classified film that is being published in the State, or that the censor has reasonable grounds to believe will be published in the State; or

- (b) the publisher of a computer game that is being published in the State, or that the censor has reasonable grounds to believe will be published in the State,

require the publisher to submit to the censor for approval a copy of every advertisement used or intended to be used in connection with the publishing.

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

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(3) It is a defence to a charge of an offence against subsection (2) for a person charged to prove that the person did not intend to —

- (a) publish the film or computer game in the State; or
- (b) cause, authorize, permit or license the film or computer game to be published in the State.

***Division 2 — Advertising for unclassified films***

**Definitions**

**42.** In this Division —

“**eligible film**” means an unclassified film that —

- (a) is intended for public exhibition;

- (b) is not an excluded film; and
- (c) complies with conditions determined by the relevant Minister by notice in the appropriate *Gazette*;

**“excluded film”** means a film that is exempt from classification, or from enforcement provisions relating to the public exhibition or sale of films, under this Act.

### **Certificates of exemption**

**43.** (1) A person who is, or proposes to be, the distributor or exhibitor of an eligible film may apply to the censor for a certificate of exemption in relation to the film for advertising purposes.

(2) An application for a certificate of exemption must be —

- (a) in writing;
- (b) made in a form approved by the censor in writing;
- (c) signed by or on behalf of the applicant; and
- (d) accompanied by the prescribed fee for that category of film.

### **Granting of certificates of exemption**

**44.** (1) Subject to this section, the censor may grant a certificate of exemption in relation to an eligible film.

(2) The censor must not grant a certificate of exemption in relation to a film if the censor is of the opinion that, if the film were classified, it would be classified RC, X or R.

(3) The censor must not, without the written approval of the relevant Minister, grant more than 30 certificates of exemption in a year.

### **Censor may refuse certificate**

**45.** The censor may refuse to grant a certificate of exemption in relation to a film if the censor is of the opinion that the applicant has not given to the censor a copy of all advertising matter relating to the film.

### **Conditions of exemptions**

**46.** The relevant Minister may, by notice in the appropriate *Gazette*, determine conditions that are to apply to the use of advertising matter in relation to films in respect of which certificates of exemption have been granted.

### **Revocation of exemptions**

**47.** The censor may, by notice in writing given to a person to whom a certificate of exemption has been granted, revoke the certificate if the censor is satisfied that there has been a breach of a condition applicable to the exemption.

### **Review of decision not to grant exemption**

**48.** If —

- (a) the censor refuses to grant a certificate of exemption in respect of an eligible film; and
- (b) the refusal was not because of section 44 (3),

the applicant may apply to the appeal censor for a review of the decision.

**PART 5 — RECLASSIFICATION OF FILMS AND  
COMPUTER GAMES**

**Limit on reclassification**

- 49.** (1) If —
- (a) a film or computer game is classified; or
  - (b) an advertisement is approved or refused approval under section 40,

the censor must not reclassify the film or computer game, or approve or refuse to approve the advertisement, within the period of 2 years commencing on the day on which the classification, approval or refusal of approval was done.

(2) Subsection (1) does not prevent the censor classifying a film or computer game that becomes unclassified under section 32.

**Reclassification etc. after 2 years**

- 50.** (1) After the period of 2 years referred to in section 49, the censor may —
- (a) reclassify the film or computer game; or
  - (b) reconsider the advertisement and approve or refuse to approve it.

(2) The censor may act under subsection (1) at the request of the Minister or on the initiative of the censor.

(3) If the Minister requests the censor in writing to act under subsection (1), the censor must do so.

**Notice of intention to reclassify etc.**

**51.** (1) If the censor intends to reclassify a film or computer game or reconsider a decision on an advertisement, the censor must give notice of that intention, inviting submissions about the matter.

(2) The censor must cause the contents of the notice to be publicised in such manner as the censor decides at least 30 days before the censor proposes to consider the matter.

(3) If practicable, the censor must give a copy of the notice to the person on whose application the former classification or approval was made or given at least 30 days before the censor proposes to consider the matter.

(4) The notice must specify the day on which the censor proposes to consider the matter.

**Consideration of submissions**

**52.** The matters that the censor is to take into account in reclassifying the film or computer game or in approving or refusing to approve the advertisement include issues raised in submissions made to the censor about the matter.

**PART 6 — REVIEW OF DECISIONS ON FILMS AND  
COMPUTER GAMES**

**The persons who may apply for review**

**53.** Any of the following persons may apply to the appeal censor for a review of a decision of the censor —

- (a) the Minister;
- (b) the applicant for classification of the film or computer game concerned or the applicant for approval of the advertisement concerned;
- (c) the publisher of the film or computer game concerned;
- (d) a person aggrieved by the decision.

**Applications for review**

**54.** (1) An application for review of a decision must be —

- (a) in writing;
- (b) in a form approved by the appeal censor in writing;
- (c) signed by or on behalf of the applicant; and
- (d) except for an application made by the Minister — accompanied by the prescribed fee.

(2) An application by the Minister for review of a decision may be made at any time.

(3) Any other application for review of a decision must be made —

- (a) within 30 days after the applicant received notice of the decision; or
- (b) within such longer period as the appeal censor allows.

(4) If a person other than the original applicant applies for review of a decision, the appeal censor must notify the original applicant in writing of the application and of the day on which it will be considered.

### **Dealing with applications**

**55.** (1) The appeal censor must deal with an application for review of a decision, and give notice of the decision in respect of the application, in the same way the censor deals with an application for classification of a film or computer game or for approval of an advertisement and gives notice of a decision.

(2) Section 30 (other than subsection (6)) applies for the purpose of an application for review as if references in that section to the censor were references to the appeal censor.

(3) A decision of the appeal censor takes effect on the day on which notice of the decision is given.

### **Applications for information**

**56.** (1) A person may apply to the appeal censor for a copy of a classification certificate issued by the appeal censor or of a notice of a decision of the appeal censor.

(2) If the applicant pays the prescribed fee, the appeal censor must give the copy to the applicant.

**PART 7 — OFFENCES**

***Division 1 — Indecent or obscene articles,  
child pornography***

**Division does not apply to certain articles**

57. Subject to section 15 (4), this Division does not apply to —
- (a) a publication that is classified unrestricted or restricted;
  - (b) a film that is classified G, PG, M, MA, R or X;
  - (c) a computer game that is classified G, G (8+), M (15+) or MA (15+); or
  - (d) an advertisement that is approved under Part 4.

**Merit or *bona fide* medical article**

58. It is a defence to a charge of an offence in this Division to prove that the article concerned is —
- (a) an article of recognized literary, artistic or scientific merit; or
  - (b) a *bona fide* medical article,

and that publishing the article is justified as being for the public good.

**Indecent or obscene articles**

59. (1) A person must not —
- (a) with intent to sell or supply the article or the copy to another, possess or copy; or

(b) sell or supply, or offer to sell or supply, to another,  
an indecent or obscene article.

(2) A person must not publish anything likely to be understood as conveying that the person publishes or supplies indecent or obscene articles.

(3) A person must not display, exhibit or demonstrate an indecent or obscene article in a public place.

(4) A person must not display, exhibit or demonstrate an indecent or obscene article so as to be visible in a public place.

(5) A person must not possess or copy an indecent or obscene article.

(6) A person must not leave in or upon any place an indecent or obscene article.

(7) A person who contravenes subsection (1) or (3) commits an offence and is liable to a penalty of —

(a) in the case of an individual, \$10 000 or imprisonment for one year;

(b) in any other case, \$50 000.

(8) A person who contravenes subsection (2), (4), (5) or (6) commits an offence and is liable to a penalty of —

(a) in the case of an individual, \$5 000 or imprisonment for 6 months;

(b) in any other case, \$25 000.

(9) In proceedings for an offence against subsection (1), evidence that a person had possession of, or made, 10 or more copies of an indecent or obscene article is evidence that the

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person intended to sell the article and, in the absence of evidence to the contrary, is proof of that fact.

**Child pornography**

**60.** (1) A person who —

- (a) with intent to sell or supply the child pornography or the copy to another, possesses or copies child pornography; or
- (b) sells or supplies, or offers to sell or supply, to another child pornography,

is guilty of a crime, and is liable to imprisonment for 7 years.

(2) A person who publishes —

- (a) anything likely to be understood as conveying that the person publishes or supplies child pornography; or
- (b) an advertisement for child pornography,

is guilty of a crime, and is liable to imprisonment for 5 years.

(3) A person who displays, exhibits or demonstrates child pornography is guilty of a crime, and is liable to imprisonment for 5 years.

(4) A person who possesses or copies child pornography is guilty of a crime, and is liable to imprisonment for 5 years.

(5) In proceedings for an offence against subsection (1), evidence that a person had possession of, or made, 10 or more copies of an article that is child pornography is evidence that the person intended to sell the child pornography and, in the absence of evidence to the contrary, is proof of that fact.

(6) For the purposes of subsection (2) (b), if a person publishes an advertisement for child pornography at the request of another person, that other person alone must be taken to have published it.

(7) A person liable to imprisonment under this section may be sentenced to pay a fine of any amount in addition to or instead of being sentenced to imprisonment.

***Division 2 — Publications***

**Refused publications: offences**

- 61.** (1) A person must not —
- (a) with intent to sell or supply it or the copy to another, possess or copy; or
  - (b) sell or supply, or offer to sell or supply, to another,

a refused publication or an unclassified publication that would, if classified, be a refused publication.

Penalty:

- (a) in the case of an individual, \$15 000 or imprisonment for 18 months;
- (b) in any other case, \$75 000.

(2) A person must not possess or copy a refused publication.

Penalty:

- (a) in the case of an individual, \$10 000 or imprisonment for one year;
- (b) in any other case, \$50 000.

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(3) A person must not publish —

- (a) anything likely to be understood as conveying that the person publishes or supplies refused publications; or
- (b) an advertisement for a refused publication.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(4) A person must not —

- (a) leave a refused publication in a public place; or
- (b) leave a refused publication on private premises without the occupier's permission.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(5) In proceedings for an offence against subsection (1), evidence that a person had possession of, or made, 10 or more copies of a refused 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.

(6) For the purposes of subsection (3) (b), if a person publishes an advertisement for a refused publication at the request of another person, that other person alone must be taken to have published it.

**Possession or copying of restricted publications for sale**

**62.** (1) A person, other than a registered person, must not possess or copy a restricted publication with the intention of selling the publication or copy.

Penalty:

- (a) in the case of an individual, \$1 000;
- (b) in any other case, \$5 000.

(2) In proceedings for an offence against subsection (1), evidence that a person had possession of, or made, 10 or more copies of a restricted 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.

**Sale or supply of restricted publications**

**63.** (1) A person must not sell a restricted publication except in registered premises.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(2) A person who is not the parent or guardian of the minor must not sell or supply a restricted publication to a minor.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

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(3) It is a defence to a charge of an offence against subsection (2) for the person charged to prove that —

- (a) the minor produced to the person or the person's employee or agent acceptable proof of age before the person sold or supplied the publication to the minor and the person or the person's employee or agent believed on reasonable grounds that the minor was an adult; or
- (b) in the case of supply of a restricted publication, the minor was employed by the person or the person's employer and the supply took place in the course of that employment.

(4) A minor who is 15 years of age or older must not buy a restricted publication knowing that it is so classified.

Penalty: \$200.

**Leaving restricted publications in certain places**

**64.** (1) A person must not leave a restricted publication —

- (a) in a public place other than registered premises; or
- (b) on private premises without the occupier's permission.

Penalty:

- (a) in the case of an individual, \$1 000;
- (b) in any other case, \$5 000.

(2) It is a defence to a charge of an offence against subsection (1) for the person charged to prove that the person believed on reasonable grounds that the public place was registered premises.

**Display or advertising of restricted publications**

- 65.** (1) Subject to this section, a person must not —
- (a) display a restricted publication in a public place;
  - (b) publish an advertisement for a restricted publication.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

- (2) Subsection (1) does not apply to —

- (a) the display of, or an advertisement for, a restricted publication in registered premises in a manner that —
  - (i) is not visible from outside the registered premises; and
  - (ii) is not visible by a minor in the registered premises; or
- (b) the advertising of a restricted publication in a restricted publication or in a publication that would, if classified, be classified as restricted.

(3) For the purposes of subsection (1) (b), if a person publishes an advertisement for a restricted publication at the request of another person, that other person alone must be taken to have published it.

(4) A registered person may display in that person's registered premises a notice in the approved form that restricted publications are available for sale on those premises.

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(5) 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 restricted publications.

Penalty:

- (a) in the case of an individual, \$1 000;
- (b) in any other case, \$5 000.

(6) It is a defence to a charge of an offence under subsection (5) 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.

(7) In subsection (4) —

“**approved form**” means a notice approved by the Minister and published in the *Government Gazette*.

### ***Division 3 — Films***

#### **Exhibition of film in public place**

**66.** A person must not exhibit a film in a public place unless the film —

- (a) is classified;
- (b) is exhibited with the same title as that under which it is classified; and

- (c) is exhibited in the form, without alteration or addition, in which it is classified.

Penalty:

- (a) in the case of an individual, \$10 000 or imprisonment for one year;
- (b) in any other case, \$50 000.

### **Display of notice about classification**

**67.** (1) A person who exhibits a film in a public place must keep a notice in the approved form about classifications for films on display in a prominent place in that public place so that the notice is clearly visible to the public.

Penalty:

- (a) in the case of an individual, \$1 000;
  - (b) in any other case, \$5 000.
- (2) In subsection (1) —

**“approved form”** means a form approved by the censor and published in the appropriate *Gazette*.

### **RC films: exhibition**

**68.** A person must not exhibit in any place —

- (a) an unclassified film that would, if classified, be classified RC; or

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- (b) a film classified RC.

Penalty:

- (a) in the case of an individual, \$15 000 or imprisonment for 18 months;
- (b) in any other case, \$75 000.

**X films: exhibition**

**69.** (1) A person must not exhibit in a public place a film classified X.

Penalty:

- (a) in the case of an individual, \$10 000 or imprisonment for one year;
- (b) in any other case, \$50 000.

(2) A person must not exhibit so that it can be seen from a public place that is outside the place where it is exhibited —

- (a) an unclassified film that would, if classified, be classified X; or
- (b) a film classified X.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(3) A person must not exhibit in a place that is not a public place, in the presence of a minor —

- (a) an unclassified film that would, if classified, be classified X; or

- (b) a film classified X.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(4) It is a defence to a charge of an offence against subsection (3) for the person charged to prove that the person believed on reasonable grounds that the minor was an adult.

**R and MA films: exhibition**

**70.** (1) A person must not exhibit so that it can be seen from a public place that is outside the place where it is exhibited —

- (a) an unclassified film that would, if classified, be classified R or MA; or
- (b) a film classified R or MA.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(2) The Minister may, by notice published in the *Government Gazette* and served on the exhibitor of the film, exempt an exhibitor of films from subsection (1) on such conditions as are specified in the notice.

(3) A person must not exhibit in a place that is not a public place, in the presence of a minor —

- (a) an unclassified film that would, if classified, be classified R; or

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- (b) a film classified R,

unless the person is a parent or guardian of the minor.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(4) It is a defence to a charge of an offence against subsection (3) for the person charged to prove that the person believed on reasonable grounds that the minor was an adult.

**Attendance of minor at RC, X or R films**

**71.** (1) Any adult who knows that —

- (a) an unclassified film that would, if classified, be classified RC, X or R; or
- (b) a film classified RC, X or R,

is to be exhibited in a public place, must not permit a minor to attend the exhibition of the film.

Penalty: \$5 000 or imprisonment for 6 months.

(2) A minor who is 15 years of age or older must not attend the exhibition in a public place of a film classified RC, X or R, knowing that the film is so classified.

Penalty: \$200.

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

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(4) It is a defence to a charge of an offence against subsection (3) for the person charged to prove that —

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

**Attendance of minor at MA film — offence by exhibitor**

**72.** (1) A person must not exhibit in a public place a film classified MA if —

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

Penalty:

- (a) in the case of an individual, \$1 000;
- (b) in any other case, \$5 000.

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

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

(3) It is a defence to a charge of an offence against subsection (1) for the person charged to prove that —

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

#### **Sale of unclassified, RC and X films**

**73.** A person must not sell an unclassified film or a film classified RC or X.

Penalty:

- (a) in the case of an individual, \$15 000 or imprisonment for 18 months;
- (b) in any other case, \$75 000.

**Sale of classified films**

**74.** A person must not sell a classified film unless the film is sold —

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

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

**Display of notice about classifications at place of sale**

**75.** (1) A person who sells films on any premises must keep a notice in the approved form about classifications for films on display in a prominent place on the premises so that the notice is clearly visible to the public.

Penalty:

- (a) in the case of an individual, \$1 000;
  - (b) in any other case, \$5 000.
- (2) In subsection (1) —

**“approved form”** means a form approved by the censor and published in the appropriate *Gazette*.

**Films to bear determined markings and consumer advice**

**76.** (1) A person must not sell a film unless the determined markings relevant to the classification of the film and the relevant consumer advice, if any, are displayed on the container, wrapping or casing of the film.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(2) A person must not sell an unclassified film if the container, wrapping or casing in which the film is sold bears a marking that indicates or suggests that the film has been classified.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(3) A person must not sell a classified film if the container, wrapping or casing in which the film is sold bears a marking that indicates or suggests that the film is unclassified or has a different classification.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(4) If a film is reclassified under section 50, display of the determined markings and consumer advice applicable to the film before reclassification is sufficient compliance with this section for a period of 30 days after the decision to reclassify takes effect.

**Keeping unclassified, RC or X films with other films**

**77.** (1) If a person keeps or possesses an unclassified film or a film classified RC or X on any premises where classified films are sold, the person and the occupier of the premises are each guilty of an offence.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(2) It is a defence to a charge of an offence against subsection (1) for the person charged to prove that the person did not know, and could not reasonably have known, that the film was on the premises.

**Display of R film**

**78.** A person must not display in a public place a film classified R with the intention of selling the film except in an area that is set aside for the display of films with that classification and is clearly and visibly identifiable as such.

Penalty:

- (a) in the case of an individual, \$500;
- (b) in any other case, \$2 500.

**Sale or supply of certain films to minors**

**79.** (1) A person must not sell or supply to a minor a film classified R, unless the person is a parent or guardian of the minor.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(2) It is a defence to a charge of an offence against subsection (1) for the person charged to prove that —

- (a) the minor produced to the person charged or that person's employee or agent acceptable proof of age before the person charged sold or supplied the film to the minor and the person charged or that person's employee or agent believed on reasonable grounds that the minor was an adult; or
- (b) the minor was employed by the person charged or that person's employer and the supply took place in the course of that employment.

(3) A minor who is 15 years of age or older must not buy a film classified RC, X or R knowing that it is so classified.

Penalty: \$200.

(4) A person must not sell or supply to a minor under 15 years of age a film classified MA unless the person is a parent or guardian of the minor.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(5) It is a defence to a charge of an offence against subsection (4) for the person charged to prove that the person charged or that person's employee or agent believed on reasonable grounds that the minor was 15 years of age or older.

**Leaving films in certain places**

**80.** A person must not leave in a public place or, without the occupier's permission, on private premises —

- (a) an unclassified film that would, if classified, be classified X; or
- (b) a film classified X,

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

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

**Possession or copying of certain films**

**81.** (1) A person must not possess or copy —

- (a) an unclassified film that would, if classified, be classified RC; or
- (b) a film classified RC.

Penalty:

- (a) in the case of an individual, \$10 000 or imprisonment for one year;
- (b) in any other case, \$50 000.

(2) A person must not possess or copy —

- (a) an unclassified film that would, if classified, be classified X, R or MA; or
- (b) a film classified X,

with the intention of selling the film or the copy, or exhibiting the film or the copy in a public place.

Penalty:

- (a) in the case of an individual, \$10 000 or imprisonment for one year;
- (b) in any other case, \$50 000.

(3) In proceedings for an offence against subsection (2), evidence that a person had possession of, or made, 10 or more copies of a film is evidence that the person intended to sell or exhibit the film and, in the absence of evidence to the contrary, is proof of that fact.

#### ***Division 4 — Computer games***

##### **Sale or demonstration of computer games in public place**

**82.** A person must not sell or demonstrate a computer game in a public place unless the computer game —

- (a) is classified;
- (b) is sold or distributed with the same title as that under which it is classified; and

- (c) is sold or distributed in the form, without alteration or addition, in which it is classified.

Penalty:

- (a) in the case of an individual, \$10 000 or imprisonment for one year;
- (b) in any other case, \$50 000.

### **Display of notice about classification**

**83.** (1) A person who sells or demonstrates a computer game in a public place must keep a notice in the approved form about classifications for computer games on display in a prominent place in that public place so that the notice is clearly visible to the public.

Penalty:

- (a) in the case of an individual, \$1 000;
  - (b) in any other case, \$5 000.
- (2) In subsection (1) —

“**approved form**” means a form approved by the censor and published in the appropriate *Gazette*.

### **RC computer games**

**84.** (1) A person must not sell or demonstrate —

- (a) an unclassified computer game that would, if classified, be classified RC; or

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- (b) a computer game classified RC.

Penalty:

- (a) in the case of an individual, \$15 000 or imprisonment for 18 months;
- (b) in any other case, \$75 000.

(2) A minor who is 15 years of age or older must not buy a computer game classified RC, knowing that it is so classified.

Penalty: \$200.

**Demonstration of MA (15+) computer games**

**85.** (1) A person must not demonstrate a computer game classified MA (15+) in a public place.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(2) A person must not demonstrate so that it can be seen from a public place —

- (a) an unclassified computer game that would, if classified, be classified MA (15+); or
- (b) a computer game classified MA (15+).

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(3) A person must not demonstrate in a place that is not a public place, in the presence of a minor under 15 years of age —

- (a) an unclassified computer game that would, if classified, be classified MA (15+); or
- (b) a computer game classified MA (15+),

unless that person is a parent or guardian of the minor.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(4) It is a defence to a charge of an offence against subsection (3) for the person charged to prove that the person believed on reasonable grounds that the minor was 15 years of age or older.

**Computer games to bear determined markings and consumer advice**

**86.** (1) A person must not sell a computer game unless the determined markings relevant to the classification of the computer game and relevant consumer advice, if any, are displayed on the container, wrapping or casing of the computer game.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

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(2) A person must not sell an unclassified computer game if the container, wrapping or casing in which the computer game is sold bears a marking that indicates or suggests that the computer game has been classified.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(3) A person must not sell a classified computer game if the container, wrapping or casing in which the computer game is sold bears a marking that indicates or suggests that the computer game is unclassified or has a different classification

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(4) If a computer game is reclassified under section 50, display of the determined markings and consumer advice applicable to the computer game before reclassification is sufficient compliance with the section for a period of 30 days after the decision to reclassify takes effect.

**Keeping unclassified or RC computer games with other computer games**

**87.** (1) If a person keeps or possesses an unclassified computer game or a computer game classified RC on any premises where classified computer games are sold or demonstrated, the person and the occupier of the premises are each guilty of an offence.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(2) It is a defence to a charge of an offence against subsection (1) for the person charged to prove that the person did not know, and could not reasonably have known, that the computer game was on the premises.

### **Sale or supply of certain computer games to minors**

**88.** (1) A person must not sell or supply to a minor who is under 15 years of age a computer game classified MA (15+) unless the person is a parent or guardian of the minor.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(2) It is a defence to a charge of an offence against subsection (2) for the person charged to prove that the person charged or that person's employee or agent believed on reasonable grounds that the minor was 15 years of age or older.

### **Possession or copying of certain computer games**

**89.** (1) A person must not possess or copy —

- (a) an unclassified computer game that would, if classified, be classified RC; or

- (b) a computer game classified RC.

Penalty:

- (a) in the case of an individual, \$10 000 or imprisonment for one year;
- (b) in any other case, \$50 000.

(2) A person must not possess or copy an unclassified computer game that would, if classified, be classified MA (15+) with the intention of selling the computer game or the copy or demonstrating the computer game or the copy in a public place.

Penalty:

- (a) in the case of an individual, \$10 000 or imprisonment for one year;
- (b) in any other case, \$50 000.

(3) A person must not possess or copy a computer game classified MA (15+) with the intention of demonstrating the computer game or the copy in a public place.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(4) In proceedings for an offence against subsection (2) or (3), evidence that a person had possession of, or made, 10 or more copies of a computer game is evidence that the person intended to sell or demonstrate the computer game and, in the absence of evidence to the contrary, is proof of that fact.

***Division 5 — Advertisements***

**Certain advertisements not to be published**

**90.** (1) A person must not publish an unapproved advertisement for a film or computer game.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(2) In subsection (1) —

**“unapproved advertisement”** means an advertisement that —

- (a) has not been submitted for approval under section 40 and, if submitted, would be refused approval;
- (b) has been refused approval under section 40;
- (c) is in an altered form to the form in which it is approved under section 40; or
- (d) is approved under section 40 subject to conditions, and is not published in accordance with those conditions.

**s. 91****Certain films and computer games not to be advertised**

- 91.** (1) A person must not publish an advertisement for —
- (a) an unclassified film, other than a film in relation to which a certificate of exemption has been granted under section 44;
  - (b) a film classified RC or X;
  - (c) an unclassified computer game; or
  - (d) a computer game classified RC.

## Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(2) For the purposes of this section, if a person publishes an advertisement for an unclassified film or an unclassified computer game at the request of another person, that other person alone must be taken to have published it.

**Screening of advertisements with feature films**

**92.** A person must not screen in a public place an advertisement for a film during a programme for the exhibition of another film (“**the feature film**”) unless the feature film has a classification specified in column 1 of an item in the Table and the advertised film has a classification specified opposite it in column 2 of that item.

TABLE

<b>Item</b>	<b>Column 1 Feature film</b>	<b>Column 2 Advertised film</b>
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA	MA, M, PG or G
5	R	R, MA, M, PG or G

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

#### **Liability of occupier for certain advertisements**

**93.** (1) An occupier of a public place must not screen in the public place an advertisement for a film classified R or MA.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(2) It is a defence to a charge of an offence against subsection (1) for the person charged to prove that —

- (a) if the advertised film is classified MA, the advertisement was screened during a programme for the exhibition of a film classified R or MA; or

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- (b) if the advertised film is classified R, the advertisement was screened during a programme for the exhibition of a film classified R.

**Sale of feature films with advertisements**

**94.** A person must not sell a film (“**the feature film**”) that is accompanied by an advertisement for another film unless the feature film has a classification specified in column 1 of an item in the Table and the advertised film has a classification specified opposite it in column 2 of that item.

**TABLE**

<b>Item</b>	<b>Column 1 Feature film</b>	<b>Column 2 Advertised film</b>
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA	MA, M, PG or G
5	R	R, MA, M, PG or G

Penalty:

- (a) in the case of an individual, \$2 000;  
 (b) in any other case, \$10 000.

**Advertisements with computer games**

**95.** A person must not sell a computer game (“**the main game**”) that is accompanied by an advertisement for another

computer game unless the main game has a classification specified in column 1 of an item in the Table and the advertised computer game has a classification specified opposite it in column 2 of that item.

**TABLE**

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

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

**Advertisement to contain determined markings and consumer advice**

**96.** (1) A person must not publish an illegal advertisement for a classified film or a classified computer game.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(2) In subsection (1) —

**“illegal advertisement”** means an advertisement that does not —

- (a) contain the determined markings relevant to the classification of the film or computer game and relevant consumer advice, if any; and
- (b) display the determined markings and consumer advice —
  - (i) in the manner determined by the censor under section 22; and
  - (ii) so as to be clearly visible, having regard to the size and nature of the advertisement.

(3) If a film or computer game is reclassified under section 50, display of the determined markings and consumer advice applicable to the film or computer game before reclassification is sufficient compliance with subsection (1) for a period of 30 days after the decision to reclassify takes effect.

### **Misleading or deceptive advertisements**

**97.** (1) A person must not publish an advertisement for an unclassified film or an unclassified computer game with a marking that indicates or suggests that the film or computer game is classified.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(2) A person must not publish an advertisement for a classified film or a classified computer game with a marking that

indicates or suggests that the film or computer game is unclassified or has a different classification.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

(3) If a film or computer game is reclassified under section 50, publication of the determined markings applicable to the film or computer game before reclassification is sufficient compliance with subsection (2) for a period of 30 days after the decision to reclassify takes effect.

**Classification symbols etc. to be published with advertisements**

**98.** A person must not publish a publication containing an advertisement for —

- (a) a film; or
- (b) a computer game,

unless the publication also contains a list of the classification symbols and determined markings for films or computer games respectively.

Penalty:

- (a) in the case of an individual, \$2 000;
- (b) in any other case, \$10 000.

***Division 6 — Computer services***

**Interpretation**

99. In this Division —

“**code of practice**” means a code of practice, as amended from time to time, that is approved and published under section 100;

“**computer service**” means a service provided by or through the facilities of a computer communication system allowing —

- (a) the input, output or examination of computer data or computer programmes;
- (b) the transmission of computer data or computer programmes from one computer to another; or
- (c) the transmission of computer data or computer programmes from a computer to a terminal device;

“**objectionable material**” means —

- (a) a film classified RC, a computer game classified RC, or a refused publication;
- (b) child pornography;
- (c) an article that promotes crime or violence, or incites or instructs in matters of crime or violence; or
- (d) an article that describes or depicts, in a manner that is likely to cause offence to a reasonable adult —
  - (i) the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct;

- (ii) sexual conduct with or upon the body of a dead person;
- (iii) the use of urine or excrement in association with degrading or dehumanizing conduct or sexual conduct;
- (iv) bestiality;
- (v) acts of torture or the infliction of extreme violence or extreme cruelty;

**“restricted material”** means an article that a reasonable adult, by reason of the nature of the article, or the nature or extent of references in the article, to matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena, would regard as unsuitable for a minor to see, read or hear.

### **Codes of practice**

**100.** (1) The Minister may approve any code of practice relating to computer services.

(2) The Minister must cause a copy of a code of practice approved under subsection (1) to be published in the *Government Gazette*.

(3) The Minister may approve an amendment of a code of practice, and upon publication in the *Government Gazette* of the approved amendment, the code is taken to be amended accordingly.

(4) The Minister may by notice published in the *Government Gazette* revoke the approval of a code of practice.

(5) A code of practice approved and published under this section is a regulation for the purpose of section 42 of the *Interpretation Act 1984*.

**Objectionable material: offences**

- 101.** (1) A person must not use a computer service to —
- (a) transmit an article knowing it to be objectionable material;
  - (b) obtain possession of an article knowing it to be objectionable material;
  - (c) demonstrate an article knowing it to be objectionable material;
  - (d) advertise that objectionable material is available for transmission; or
  - (e) request the transmission of objectionable material knowing it to be objectionable material.

Penalty:

- (a) in the case of an individual, \$15 000 or imprisonment for 18 months;
  - (b) in any other case, \$75 000.
- (2) It is a defence to a charge of an offence against this section to prove that the article concerned is —
- (a) an article of recognized literary, artistic or scientific merit; or
  - (b) a *bona fide* medical article,

and that transmitting, obtaining possession of, demonstrating, advertising, or requesting the transmission of, the article is justified as being for the public good.

**Restricted material: offences**

**102.** (1) A person must not use a computer service to transmit restricted material to a minor.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

(2) A person must not use a computer service to make restricted material available to a minor.

Penalty:

- (a) in the case of an individual, \$5 000 or imprisonment for 6 months;
- (b) in any other case, \$25 000.

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

- (a) the defendant complied with a code of practice;
- (b) the defendant took all reasonable steps in the circumstances to avoid a contravention of the subsection; or
- (c) the defendant believed on reasonable grounds that —
  - (i) the person to whom the defendant transmitted the restricted material was not a minor; or
  - (ii) the restricted material would not be made available to a minor.

**PART 8 — EXEMPTIONS AND EXCEPTIONS**

**Supply etc. not offence in certain circumstances**

**103.** Nothing in Part 7 makes it an offence to supply, display or to be in possession of an article for the purpose of classification or law enforcement.

**Defences for possession in certain circumstances**

**104.** (1) In proceedings for an offence against Part 7 relating to possession of an article it is a defence for the person charged to prove that the person had possession of the article to which the charge relates, in good faith —

- (a) for the purpose or with the intention of delivering it into the possession of a person lawfully entitled to have possession of it;
- (b) for the purposes of any proceedings under this Act or any other enactment in relation to the article;
- (c) for the purpose of giving legal advice in relation to the article;
- (d) for the purpose of giving legal advice, or making representations, in relation to any proceedings; or
- (e) in accordance with, or for the purpose of complying with, any decision or order made in relation to the article by the censor, the appeal censor, the Minister, or any court.

(2) Nothing in subsection (1) limits the effect of sections 103, 105, 106 and 110, or prejudices any defence that is open to a person charged with an offence under Part 7 to raise apart from subsection (1).

**Exemption of certain articles and computer services**

**105.** (1) The censor may, on application, direct in writing that Part 7 does not apply, to the extent and subject to any condition specified in the direction, to or in relation to any film, computer game or advertisement.

(2) The Minister may, on application or on his or her own initiative, direct in writing that Part 7 does not apply, to the extent and subject to any condition specified in the direction, to or in relation to any article or any computer service within the meaning of section 99.

**Exemption of approved organization**

**106.** (1) The Minister or the censor may, on application under subsection (2), direct in writing that Part 7 does not apply, or any of the provisions of that Part do not apply, to an organization approved under section 108 in relation to the exhibition of a film at an event, where the film and the event are specified in the direction.

(2) An application may be made by an approved organization and must —

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

(3) The Minister or censor, as the case may be, must notify an organization in writing of a decision to refuse an application for an exemption within 30 days after the date of the decision and must give reasons for the decision.

### **Ministerial directions or guidelines**

**107.** In considering whether to make a direction under section 105 or 106, the Minister or the censor must give effect to any directions or guidelines issued by the Minister in relation to the application of Part 7.

### **Organization may be approved**

**108.** (1) The Minister, by notice published in the *Government Gazette*, or the censor, by notice published in the appropriate *Gazette*, may, on application, approve an organization for the purposes of this Part.

(2) In considering whether to approve an organization, the Minister or censor must have regard to —

- (a) the purpose for which the organization was formed;
- (b) the extent to which the organization carries on activities of a medical, scientific, cultural or artistic nature;
- (c) the reputation of the organization in relation to the screening of films; and
- (d) the conditions as to admission of persons to the screening of films by the organization.

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

(4) An approval may be revoked by the person who gave the approval if, because of a change in any matter referred to in subsection (2), that person considers that it is no longer appropriate that the organization be approved.

(5) An approval given by the censor may be revoked by the Minister if the Minister considers that it is not appropriate that the organization be approved.

(6) The Minister or censor, as the case may be, must notify an organization in writing of a decision —

- (a) to refuse an application for approval; or
- (b) to revoke an approval,

within 30 days after the date of the decision and must give reasons for the decision.

(7) Notification of revocation of an approval may be given to the organization or published in the *Government Gazette*.

(8) Revocation of an approval takes effect on the date on which the notice is given or published or on a later date specified in the notice.

### **Appeal**

**109.** (1) If the censor makes a decision —

- (a) to refuse an application for approval;
- (b) to revoke an approval; or
- (c) to refuse an application for an exemption,

the organization may, within 28 days after notice of the decision has been given, appeal against the decision to the Minister.

(2) An appeal is instituted by giving notice in writing of the appeal, setting out the grounds and facts on which the appellant relies.

(3) On an appeal under this section, the Minister must consider the notice of appeal and —

- (a) affirm the decision appealed against;
- (b) vary the decision appealed against; or
- (c) set aside the decision and make a decision that the Minister thinks just,

and may exercise any power conferred on the Minister or censor by this Part.

(4) The Minister must notify an appellant in writing of his or her decision within 30 days after the date of the decision.

(5) No appeal lies against a decision of the Minister under this Part.

### **Publication to prescribed person or body**

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

- (a) a film that is not classified or is classified RC, X, R or MA;
- (b) a computer game that is not classified or is classified RC or MA (15+); or
- (c) a restricted publication or a refused publication.

## **PART 9 — ENFORCEMENT**

### **Interpretation**

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

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

(2) In this Part, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing will be committed.

### **Entry, inspection and seizure without warrant**

**112.** (1) The Minister may appoint a person as an authorized person for the purposes of subsection (2).

(2) A member of the police force, or an authorized person, may without a warrant, at any reasonable time, enter any place where the business of selling, distributing, exhibiting or demonstrating publications, films or computer games, or operating a computer service, is carried on and inspect any articles and records kept on the premises.

(3) A member of the police force who has entered a place under subsection (2) may seize any thing that the member reasonably suspects is connected with an offence against this Act that is found on or in the place.

**Obstruction**

**113.** A person must not delay, obstruct or otherwise hinder a member of the police force, or an authorized person, in the performance of his or her functions under this Act.

Penalty: \$1 000.

**False or misleading statements**

**114.** A person must not —

- (a) state anything to the Secretary or an authorized person that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the Secretary or an authorized person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Penalty: \$1 000.

**Proceedings against body corporate**

**115.** (1) If a body corporate commits an offence under this Act and it is proved that the offence occurred with the consent or connivance of any director, employee or agent of the body, or any person who was purporting to act in any such capacity, that person, as well as the body corporate, commits that offence.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(3) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that —

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

(4) If a director, employee or agent of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual or apparent authority, the body corporate must be taken, for the purposes of a prosecution for an offence against this Act, also to have engaged in the conduct unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

#### **Commencement of prosecution for offence**

**116.** (1) A prosecution for an offence against a provision of Division 2, 3 or 4 of Part 7 in relation to a publication, film or computer game that is unclassified at the time of the alleged offence —

- (a) must not be commenced until the publication, film or computer game has been classified; and
- (b) may be commenced not later than 12 months after the date on which the publication, film or computer game was classified.

(2) A prosecution for an offence against section 60 may be commenced at any time.

**Forfeiture**

**117.** (1) A court convicting a person of an offence under this Act may order the forfeiture to the Crown of —

- (a) any thing used to commit the offence; and
- (b) any other thing, the subject of the offence.

(2) The court may make an order under subsection (1) —

- (a) whether or not the thing has been seized; and
- (b) if the thing has been seized — whether or not the thing has been returned to its owner.

(3) If a thing has been seized under section 112 or under a search warrant but no person has been charged with an offence in respect of the thing an authorized person or a member of the police force must apply, within 60 days after the seizure, to a justice for the issue of a summons under subsection (4).

(4) On an application under subsection (3), the justice must issue a summons requiring the occupier of the place from which, or the person from whom, the thing was seized, or both, to show cause to a court of petty sessions why the thing should not be forfeited to the Crown.

(5) The court may permit a person who claims to be the author, publisher, printer, manufacturer or owner of the publication, film or computer game seized to appear in the proceeding, whether a notice has been given to the person or not.

(6) On the hearing of a summons —

- (a) if the court is satisfied that —
  - (i) an offence against this Act has been committed in respect of the thing; and

(ii) it is desirable that the thing be forfeited,

the court must order that the thing is forfeited to the Crown; or

(b) if the court is not so satisfied, it must order that the thing be delivered to the person apparently entitled to possession immediately before the thing was seized.

(7) Subject to subsection (8) a thing that is ordered to be forfeited under this section may be destroyed or otherwise dealt with as instructed by the Secretary.

(8) Where a thing is ordered to be forfeited to the Crown under this section, the Secretary must not direct the destruction of that thing 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 10 — ADMINISTRATION**

***Division 1 — Censorship Advisory Committee***

**Censorship Advisory Committee established**

**118.** A body by the name of the Censorship Advisory Committee is established.

**Membership of Committee**

**119.** (1) The Committee consists of —

- (a) not less than 3 and not more than 7 persons appointed by the Minister; and
- (b) an officer of the Public Service appointed by the Minister.

(2) Of the persons appointed under subsection (1) (a) —

- (a) at least one is to be a woman;
- (b) at least one is to be a recognized expert in literature, art or science;
- (c) at least one is to be a certificated practitioner as defined in section 3 of the *Legal Practitioners Act 1893*;
- (d) at least one is to be, at the time that person is initially appointed, the parent of a minor.

**Chairperson**

**120.** The Minister is to appoint a member of the Committee appointed under section 119 (1) (a) to be chairperson of the Committee.

### **Constitution and proceedings**

**121.** The provisions of Schedule 1 have effect with respect to the constitution and proceedings of the Committee.

### **Remuneration and expenses of members**

**122.** A member is to be paid the remuneration and travelling and other allowances that are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

### **Reports of Committee**

**123.** (1) In addition to the matters that may be referred under section 11, the Minister may refer to the Committee for its report any film or computer game or any other matter arising out of the administration of this Act.

(2) In a report under this Act to the Minister the Committee is to include the reasons for and matters taken into consideration in formulating any decision reported and each member of the Committee may make an individual report on the matter referred to the Committee.

## ***Division 2 — Staff of Committee***

### **Secretary to Committee**

**124.** (1) The Minister is to appoint a person employed under Part 3 of the *Public Sector Management Act 1994* to be Secretary to the Committee.

(2) A person may hold the office of Secretary in conjunction with any other office in the Public Service.

(3) The Secretary has the functions that are conferred by this Act or are conferred or directed to be performed by the Committee.

**Use of staff and facilities of departments, agencies and instrumentalities**

**125.** (1) The Committee may by arrangement make use, either full-time or part-time, of —

- (a) the services of any officer or employee in the Public Service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; and
- (b) any facilities of a department of the Public Service or of a State agency or instrumentality.

(2) An arrangement under subsection (1) is to be made between the Committee and the relevant employing authority within the meaning of the *Public Sector Management Act 1994* and is to be on such terms as they agree.

***Division 3 — Censor and appeal censor***

**Arrangement with Commonwealth**

**126.** (1) The State may by written agreement make arrangements with the Commonwealth for the exercise and discharge by officers or authorities of the Commonwealth, on behalf of the State, of the functions of a censor, or of an appeal censor, with respect to the classification of films and computer games and the approval of advertisements under this Act.

(2) The agreement may make provision for all or any matters necessary or convenient to be provided for or incidental to carrying out the agreement.

(3) The agreement is to contain a provision to the effect that it may be terminated by the Minister at any time.

(4) An agreement under this section is to have effect according to its tenor.

(5) The Minister is to cause notice of the making or termination of an agreement under this section, including the date of the making or termination of the agreement, as the case may be, to be published in the *Government Gazette* as soon as practicable after that date.

**Other arrangements for appointment of censor, etc.**

**127.** (1) If there is no agreement in force under section 126, a censor and an appeal censor may be appointed under Part 3 of the *Public Sector Management Act 1994*.

(2) The offices of censor and appeal censor may be held in conjunction with any other office in the Public Service.

**Effect of arrangement under section 126**

**128.** (1) If an agreement is in force under section 126 an application for —

- (a) classification of a film or computer game;
- (b) approval of an advertisement for a film or computer game;
- (c) review of a decision in respect of a film, computer game or advertisement for a film or computer game;
- (d) a certificate of exemption in relation to a film for advertising purposes;

- (e) exemption from the application of Part 7 to the extent that that Part applies to films, computer games or advertisements for films or computer games, or some or all of those matters; or
- (f) a copy of a classification certificate, or notice of classification, for a film or computer game,

under this Act cannot be accepted by the censor unless an application is made at the same time, and an appropriate fee paid, in respect of the same matter under the Commonwealth Act.

(2) No fee is payable under this Act in respect of an application referred to in subsection (1) if —

- (a) an agreement is in force under section 126; and
- (b) an application is made at the same time, and an appropriate fee paid, in respect of the same matter under the Commonwealth Act.

**PART 11 — REGISTRATION OF PERSONS AND  
PREMISES**

**Registered person**

**129.** (1) Any person who is carrying on or intends to carry on the business of publishing publications may apply to the Secretary to be registered for the purpose of selling restricted publications.

(2) Subject to subsection (3), the Secretary must grant an application for registration made under this Part.

(3) The Secretary may refuse to grant an application for registration on the grounds that —

- (a) the applicant, or where the applicant is a body corporate, an individual concerned with the control and management of the body corporate, has been convicted of an offence against this Act that renders the applicant an unsuitable person to be registered;
- (b) the applicant, or where the applicant is a body corporate, an individual concerned with the control and management of the body corporate, has previously been registered under this Part and the Secretary cancelled or refused to renew that registration;
- (c) the applicant, or where the applicant is a body corporate, an individual concerned with the control and management of the body corporate, is not of good character and a fit and proper person to be registered;  
or
- (d) the application contains or is accompanied by information that is false or misleading to a significant extent.

**Registered premises**

**130.** (1) An applicant for registration under section 129 must specify in the application each of the premises at which the applicant carries on, or proposes to carry on, the business of publishing publications.

(2) Where the Secretary grants an application for registration under section 129, the Secretary is to register the premises specified in the application in the name of the registered person.

(3) A registered person may at any time apply to the Secretary in the approved form for premises at which the registered person proposes to carry on the business of publishing publications to be registered and the Secretary is to register those premises in the name of the registered person.

**Form of application**

**131.** (1) An application for registration or renewal of registration must be —

- (a) in writing;
- (b) in a form approved by the Minister in writing;
- (c) signed by or on behalf of the applicant;
- (d) accompanied by the prescribed fee; and
- (e) accompanied by such information as the Secretary requires.

(2) The Secretary may require an applicant to provide such information as the Secretary considers necessary in any particular case, and may require the applicant to verify the information by statutory declaration.

### **Notice of decision**

**132.** If the Secretary refuses to grant an application for registration under section 129, or refuses to register premises under section 130, the Secretary must give notice in writing of that decision to the applicant.

### **Certificates of registration**

**133.** (1) On registering a person under this Part the Secretary must issue to the person a certificate of registration in the approved form.

(2) A certificate of registration has effect for the period that the person to whom it is issued is registered under this Part.

(3) In the absence of evidence to the contrary a certificate of registration is evidence that —

- (a) the person to whom the certificate is issued is a registered person; and
- (b) that premises specified in the certificate are registered premises.

(4) In subsection (1) —

“**approved form**” means a form approved by the Minister in writing.

### **Duration of registration**

**134.** (1) Subject to subsection (2), registration of a person under this Part has effect for a period of 12 months and may be renewed from time to time for further periods of 12 months.

(2) The Secretary may cancel or refuse to renew the registration of a person if —

- (a) the registered person has been convicted of an offence against this Act; or
- (b) the certificate was obtained by fraud or misrepresentation.

(3) If the Secretary proposes to cancel or refuse to renew registration of a person the Secretary must give the registered person notice in writing of the proposal to cancel or refuse to renew the registration and the reasons for the proposal.

(4) A notice given under subsection (3) must state that within 14 days after the notice is given the person to whom it is given may make representations in writing to the Secretary concerning the matter, and the Secretary is not to determine the matter without considering any representations received within that period.

(5) If the Secretary cancels or refuses to renew the registration of a person the Secretary must give notice in writing of that decision to the registered person.

(6) Premises registered in the name of a registered person cease to be registered premises when that person ceases —

- (a) to be a registered person; or
- (b) to carry on business at those premises.

### **Register**

**135.** (1) The Secretary is to cause to be compiled and maintained a register of all registered persons showing in respect of each person —

- (a) the name of the registered person;

- (b) the business name, if any, under which the registered person carries on or intends to carry on business;
- (c) the address of each of the premises registered in the name of the registered person; and
- (d) such other particulars as are prescribed.

(2) The register may be kept or prepared in such form as the Secretary thinks fit.

(3) The Secretary must, as the occasion requires, make such amendments, additions, alterations and corrections in the register as may be necessary to make the register an accurate record of the particulars of all persons and premises registered under this Part.

(4) The register must be kept in the office of the Secretary.

(5) The Secretary may permit any person, on payment of the prescribed fee (if any), to inspect the register during office hours and to copy part or all of the register.

### **Change of particulars**

**136.** Where a person registered under this Part —

- (a) ceases to carry on business at registered premises; or
- (b) commences to carry on the business of publishing publications under a business name other than a business name specified on the register,

that person must, within 7 days of that event occurring, give notice of that event in writing to the Secretary.

Penalty: \$200.

**List of classified publications**

**137.** The Secretary —

- (a) on the application of a registered person must give to the registered person a list of every publication that is classified at the time the application is made; and
- (b) on the application of any other person and payment of the prescribed fee (if any) must give to the person a list of every publication that is classified at the time the application is made.

**PART 12 — GENERAL**

**Ministerial control**

**138.** (1) The Minister may, if satisfied that the order is necessary in the public interest, order that —

- (a) a classification assigned to a film or computer game under Part 3, 5 or 6;
- (b) an approval of an advertisement under section 40;
- (c) a certificate of exemption granted under section 44; or
- (d) an exemption under section 105,

has no effect in the State.

(2) If the Minister makes an order under subsection (1) (a) the Minister may in addition assign a classification to the film or computer game.

(3) If a film or computer game is assigned a classification under subsection (2) the film or computer game has that classification for the purposes of this Act in lieu of the classification assigned under Part 3, 5 or 6.

(4) If the Minister does not assign a classification to the film or computer game, it is taken to be unclassified for the purposes of this Act.

(5) If the Minister makes an order under subsection (1), the Minister must, within 14 days after the day on which the order was made, cause notice of the order, and of any classification assigned to the film or computer game by the Minister, to be published in the *Government Gazette*.

(6) An order made by the Minister under subsection (1) takes effect on the day on which notice of the order is published in the *Government Gazette*.

(7) For the purposes of this section the Minister has the powers conferred upon the censor by this Act, and this Act is construed as though a reference to the censor were a reference to the Minister.

### **Right of exhibitor to reject R film**

**139.** (1) Notwithstanding anything contained in a contract entered into by an exhibitor for the supply to the exhibitor for exhibition of any films, the exhibitor has, subject to this section and without incurring any liability for breach of contract, the right to reject a film classified R proposed to be delivered to the exhibitor in terms of that contract.

(2) Notice in writing of intention to reject a film classified R under this section must be given by the exhibitor on whom the right to reject is conferred to the distributor or other supplier of the film —

- (a) not less than 28 days before the proposed date of exhibition of the film, where advice as to the name of the film, and of its classification R has been received by the exhibitor at least 6 weeks prior to that proposed date; and
- (b) in any other case, within 14 days after the receipt by the exhibitor as to the name of the film and of its classification R.

(3) Where a contract of the kind referred to in subsection (1) purports to negative or is inconsistent with the right of rejection of a film classified R conferred by this section on an exhibitor so referred to, the contract —

- (a) must be read and construed subject to that right of rejection; and
- (b) has effect accordingly.

**Power to demand name, age and address**

**140.** (1) A person who —

- (a) displays, sells or supplies a publication to another person or is about to display, sell or supply a publication to another person; and
- (b) has reasonable cause to suspect that the other person has contravened or is about to contravene a provision of Part 7,

may demand the name, age and address of that other person.

(2) A person who —

- (a) exhibits, sells or supplies a film to another person or is about to exhibit, sell or supply a film to another person; and
- (b) has reasonable cause to suspect that the other person has contravened or is about to contravene a provision of Part 7,

may demand the name, age and address of that other person.

(3) A person who —

- (a) demonstrates, sells or supplies a computer game to another person or is about to demonstrate, sell or supply a computer game to another person; and
- (b) has reasonable cause to suspect that the other person has contravened or is about to contravene a provision of Part 7,

may demand the name, age and address of that other person.

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(4) A member of the police force who has reasonable cause to suspect that a person to whom —

- (a) a publication is being or is about to be displayed, sold or supplied;
- (b) a film is being or is about to be exhibited, sold or supplied; or
- (c) a computer game is being or is about to be demonstrated, sold or supplied,

has contravened or is about to contravene a provision of Part 7 may demand the name, age and address of that person.

(5) A person must not give false particulars under subsection (1), (2) or (3).

Penalty: \$200.

(6) A person must not give false particulars or fail or refuse to give satisfactory particulars demanded under subsection (4).

Penalty: \$500.

**Evidence**

**141.** (1) In any proceeding for an offence against this Act, a certificate purporting to be signed by the Secretary and stating that —

- (a) an agreement is or was in force under section 126 and that the agreement was in operation on any day or during any period specified in the certificate; or

- (b) a person specified in the certificate was the censor or the appeal censor on any day or during any period specified in the certificate,

is admissible in evidence without proof of the Secretary's signature and, unless the contrary is proved, is proof of the facts stated in the certificate.

(2) In any proceeding for an offence against this Act, a certificate purporting to be signed by the Secretary and stating that —

- (a) a publication is classified as specified in the certificate; or
- (b) a publication is not classified, or is not classified at a classification specified in the certificate,

is admissible in evidence without proof of the Secretary's signature and, unless the contrary is proved, is proof of the facts stated in the certificate.

(3) In any proceeding for an offence against this Act, a certificate purporting to be signed by the censor and stating that —

- (a) a film 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 classified computer game specified in the certificate is modified in a manner specified in the certificate;
- (c) a 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 under section 40 or has not been approved,

is admissible in evidence without proof of the censor's signature and, unless the contrary is proved, is proof of the facts stated in the certificate.

### **Protection from liability**

**142.** (1) This section applies to —

- (a) the Minister;
- (b) the censor and the appeal censor;
- (c) the members of the Committee;
- (d) the Secretary;
- (e) a person appointed to assist the Committee or acting under the direction of the Committee;
- (f) a person referred to in section 125 whose services are used by the Committee;
- (g) an authorized person;
- (h) an officer of the department of the Public Service principally assisting the Minister in the administration of this Act; and
- (i) a member of the police force and an officer in the Police Department.

(2) A person to whom this section applies is not personally liable for anything done or omitted to be done in good faith by that person in the performance or purported performance of any

duty, or the exercise or purported exercise of any power, under this Act.

**Regulations**

**143.** The Governor may make any regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

**PART 13 — TRANSITIONAL, SAVINGS, CONSEQUENTIAL  
AMENDMENTS AND REPEALS**

**Interpretation**

**144.** In this Part —

“**commencement**” means commencement of this Part.

**Pending applications**

**145.** If, on commencement, an application for —

- (a) classification of a publication under the *Indecent Publications and Articles Act 1902*;
- (b) classification of a film under the *Censorship of Films Act 1947*; or
- (c) classification of a video tape under the *Video Tapes Classification and Control Act 1987*,

has been made but not determined, the application is taken to have been made under this Act.

**Savings provisions — publications**

**146.** (1) In this section —

“**former Act**” means the *Indecent Publications and Articles Act 1902*.

(2) A publication or class of publication that has been classified as a restricted publication or restricted class of publication under the former Act before commencement is taken to have been classified as a restricted publication under this Act.

**Transitional and savings provisions — films**

**147.** (1) In this section —

“**former Act**” means the *Censorship of Films Act 1947*.

(2) A film that has been classified as a “G”, “PG”, “M”, “MA” or “R” film or has been refused approval under the former Act before commencement is taken to have been classified G, PG, M, MA or R or RC respectively under this Act.

(3) A film that has been classified as an “X” film under the *Classification of Publications Ordinance 1983* of the Australian Capital Territory before commencement is taken to have been classified X under this Act.

(4) A film that has been assigned a classification as “G”, “PG”, “M”, “MA” or “R” by the Minister under section 12B of the former Act before commencement is taken to have been given that classification under this Act.

(5) A film that has been deemed to be an unapproved film under section 12B of the former Act before commencement is taken to have been classified RC under this Act.

(6) An advertisement relating to a film that has been approved or refused approval under the former Act before commencement is taken to have been approved or refused approval, respectively, under this Act.

**Transitional and savings provisions — videos**

**148.** (1) In this section —

“**former Act**” means the *Video Tapes Classification and Control Act 1987*.

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(2) A video tape that has been classified as a “G”, “PG”, “M”, “MA” or “R” video tape or has been refused approval under the former Act before commencement is taken to have been classified G, PG, M, MA or R or RC respectively under this Act.

(3) A video tape that has been classified as an “X” film under the *Classification of Publications Ordinance 1983* of the Australian Capital Territory before commencement is taken to have been classified X under this Act.

(4) A video tape that has been assigned a classification by the Minister under section 17 of the former Act before commencement is taken to have been given that classification under this Act.

(5) A video tape that has been taken to be an unclassified video tape under section 17 of the former Act before commencement is taken to be unclassified under this Act.

(6) An advertisement relating to a video tape that has been approved or refused approval under the former Act before commencement is taken to have been approved or refused approval, respectively, under this Act.

(7) If on commencement an application for review under the former Act has been made but not determined, the application is taken to have been made under this Act.

**Transitional provisions — computer games**

**149.** (1) In this section —

“**Ordinance**” means the *Classification of Publications Ordinance 1983* of the Australian Capital Territory.

(2) A computer game that has been classified under the Ordinance with a classification specified in column 1 of an item in the Table before commencement is taken to have been

classified under this Act with a classification specified opposite it in column 2 of that item.

**TABLE**

<b>Item</b>	<b>Column 1 Ordinance</b>	<b>Column 2 This Act</b>
1	“G”	G
2	“G (8+)”	G (8+)
3	“M (15+)”	M (15+)
4	“MA (15+)”	MA (15+)

(3) A computer game that has been refused, or is taken to have been refused, classification under the Ordinance before commencement is taken to have been classified RC under this Act.

(4) Nothing in Part 7 of this Act applies to or in relation to a computer game published before commencement unless the computer game has been classified or refused classification.

(5) Advertising matter in relation to a computer game that has been approved or refused approval under the Ordinance before commencement is taken to have been approved or refused approval under this section.

**Transitional and savings provisions — Committee**

**150.** (1) In this section —

“**former Committee**” means the State Advisory Committee on Publications constituted under the *Indecent Publications and Articles Act 1902*.

(2) On commencement —

- (a) a person who immediately before commencement held office as a member of the former Committee appointed under section 7 (2) (a) of the *Indecent Publications and Articles Act 1902* continues to hold office as a member of the Committee as if appointed under section 119 (1) (a) of this Act; and
- (b) the person who immediately before commencement held office as the member of the former Committee appointed under section 7 (2) (b) of the *Indecent Publications and Articles Act 1902* continues to hold office as a member of the Committee as if appointed under section 119 (1) (b) of this Act.

(3) Subject to clause 2 of Schedule 1, the offices are held under this section for the remainder of the terms of the former offices.

#### **Savings provisions — registration**

**151.** (1) A person who, immediately before commencement, is registered under section 11A of the *Indecent Publications and Articles Act 1902* is, on commencement, taken to be registered under section 129 of this Act for the period that, and on the same terms as, applied to that former registration.

(2) Premises in the register under section 11A of the *Indecent Publications and Articles Act 1902* immediately before commencement are taken to be registered premises under this Act.

(3) The Secretary is to enter the name and other particulars of a person referred to in subsection (1) in the register and may deal with those particulars as if they were entered under section 135.

**Various Acts amended**

**152.** (1) Section 204 of the *Criminal Code*\* is amended by deleting paragraphs (1) and (2).

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

- “
- (e) a publication, within the meaning of the *Censorship Act 1996*, that has been classified as refused or classified as restricted under Part 2 of that Act;
  - (f) a film, within the meaning of the *Censorship Act 1996*, that has been classified as RC or X under Part 3 of that Act; and
  - (g) a computer game, within the meaning of the *Censorship Act 1996*, that has been classified as RC under Part 3 of that Act.
- ”.

(3) The *Constitution Acts Amendment Act 1899*\* is amended in Part 3 of Schedule V by deleting “The State Advisory Committee on Publications constituted under the *Indecent Publications and Articles Act 1902*.” and substituting, after the item commencing “The Casino Control Committee”, the following —

- “
- The Censorship Advisory Committee established under the *Censorship Act 1996*.
- ”.

[\* Reprinted as at 17 December 1993 as the Schedule to the *Criminal Code Act 1913* appearing in Appendix B to the *Criminal Code Compilation Act 1913*. For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, pp. 51-3.]

**Repeals**

**153.** (1) The *Indecent Publications and Articles Act 1902* is repealed.

(2) The *Censorship of Films Act 1947* is repealed.

(3) The *Video Tapes Classification and Control Act 1987* is repealed.

**SCHEDULE 1**

[Section 121]

**PROVISIONS AS TO CONSTITUTION AND PROCEEDINGS  
OF COMMITTEE**

**Term of office**

1. (1) Subject to clause 2, a member appointed under section 119 (1) (a) holds office for the term, not exceeding 5 years, that is specified in the instrument of appointment, and is eligible for re-appointment.

(2) The appointment of a person as a member under section 119 (1) (b) may be terminated at any time by the Minister.

(3) Unless the office of the member becomes vacant under clause 2, a member appointed under section 119 (1) (a) continues in office until his or her successor comes into office, despite the term for which the member was appointed having expired.

**Resignation, removal, etc.**

2. The office of a member appointed under section 119 (1) (a) becomes vacant if the member —

- (a) resigns the office by written notice delivered to the Minister;
- (b) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
- (c) is removed from office by the Minister on the grounds of neglect of duty, misbehaviour, incompetence or mental or physical incapacity impairing the performance of his or her functions and proved to the satisfaction of the Minister.

**Temporary members**

3. (1) If a member is unable to act because of sickness, absence or other cause, the Minister may appoint another person to act temporarily in the place of that member and, while so acting according to the tenor of that appointment, that other person is taken to be a member of the Committee and is entitled to remuneration under section 122.

(2) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

**Sch. 1**

(3) The appointment of a person as a temporary member may be terminated at any time by the Minister.

**Meetings**

**4.** (1) The first meeting of the Committee is to be convened by the chairperson and, subject to subclause (2), subsequent meetings are to be held at the times and places the Committee determines.

(2) A special meeting of the Committee may at any time be convened by the Minister, the chairperson or any 3 members of the Committee.

(3) The chairperson is to preside at all meetings of the Committee at which he or she is present.

(4) If the chairperson is absent from a meeting the members present are to appoint one of their number to preside.

(5) A quorum for a meeting of the Committee is 3 members.

(6) At any meeting of the Committee questions are to be decided, in open voting, by a majority of the members present.

(7) The Committee is to ensure that an accurate record is kept and preserved of the proceedings at its meetings and of each resolution passed under clause 6.

**Telephone and video meetings**

**5.** Despite anything in this Schedule, a communication between members constituting a quorum under clause 4 (5) by telephone or audio-visual means is a valid meeting of the Committee, but only if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

**Resolution may be passed without meeting**

**6.** (1) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is sent or given to all members and is assented to by a majority of the members that act, matter, thing or resolution is to taken as having been done at or passed by a meeting of the Committee.

- (2) For the purposes of subclause (1) —
- (a) the meeting is taken as having been held —
    - (i) if the members assented to the document on the same day, on the day on which the document was assented to; or
    - (ii) if the members assented to the document on different days, on the day on which the document was last assented to by a member;
  - (b) 2 or more separate documents in identical terms each of which is assented to by one or more members are to be taken to constitute one document; and
  - (c) a member may signify assent to a document by signing the document or by notifying the Secretary of the member's assent in person or by post, facsimile, transmission, telephone or other method of written, audio or audio-visual communication.
- (3) Where a member signifies assent to a document otherwise than by signing the document, the member must by way of confirmation sign the document at the next meeting of the Committee attended by that member, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the Committee.

**Committee to determine own procedures**

7. Subject to this Act, the Committee may determine its own procedures.