

VIDEO TAPES CLASSIFICATION AND CONTROL ACT 1987

(No. 73 of 1987)

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WESTERN AUSTRALIA

VIDEO TAPES CLASSIFICATION AND CONTROL ACT

No. 73 of 1987

AN ACT to provide for the classification of video tapes, to control the advertising, exhibition and supply of video tapes, and to amend the *Indecent Publications and Articles Act 1902*.

[Assented to 22 November 1987]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Video Tapes Classification and Control Act 1987*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation

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

“advertisement”, in relation to a video tape, includes—

- (a) every visual means of advertising the video tape—whether in a book, paper, magazine, poster, photograph, sketch, programme, film or slide, or by way of television or inclusion in a video tape or in any other way, including any accompanying words or any spoken words or other sounds;
- (b) any form of advertising capable of being heard from a radio or any instrument or device for the production of a sound; and
- (c) any written or pictorial matter contained or displayed in or on a container or wrapping used to enclose the video tape;

“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 pursuant to an arrangement made under section 5; or
- (b) where no such arrangement is in operation, the appeal censor appointed within the meaning of section 6;

“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 arrangement under section 5; or
- (b) where no such arrangement is in operation, the censor appointed within the meaning of section 6;

“child” means a person who has not attained the age of 16 years;

- “child abuse video tape” means a video tape which depicts a person (whether engaged in sexual activity or otherwise) who is, or who is apparently, a child in a manner that is likely to cause offence to a reasonable adult;
- “classified” means classified under Part III;
- “Commonwealth Gazette” means the Commonwealth of Australia Gazette;
- “display”, in relation to a video tape, does not include exhibit;
- “minor” means a person who has not attained the age of 18 years;
- “premises” includes any structure, building, aircraft, vehicle, vessel and place (whether built upon or not), and any part thereof;
- “public place” means any place open to the public, whether on payment or the provision of any other consideration or otherwise, and includes a shop, stall, vehicle or other place to which persons are invited or permitted to resort to obtain, view or inspect goods or to obtain a service;
- “restricted area” means an area of a public place that is set aside for the display of video tapes with a classification of “R”, and that is clearly identifiable as such.
- “sell” means sell by wholesale or retail, whether by cash, on terms or otherwise, and includes—
- (a) barter;
 - (b) exchange;
 - (c) supply for profit;
 - (d) let on hire;
 - (e) offer for sale or for letting on hire;
 - (f) receive for sale or for letting on hire;
 - (g) have in possession for sale or for letting on hire;
 - (h) expose for sale or for letting on hire;
 - (i) send, forward, or deliver for sale or for letting on hire;
 - (j) cause, suffer, or allow to be sold or to be let on hire; and
 - (k) cause, suffer, or allow to be offered or exposed for sale or to be let on hire;

“synopsis”, in relation to a video tape, includes a statement or summary of any incidents, or of the plot of a play or story, depicted or intended to be depicted by means of the video tape;

“unclassified” means not classified;

“unclassified video tape” means a video tape which has not been classified and includes—

(a) a video tape which has been refused classification; and

(b) a video tape to which a classification has been assigned otherwise than in accordance with this Act;

“video tape” includes video disc.

(2) In this Act a reference to the exhibiting of a video tape includes a reference to the screening of a video tape.

(3) In any notice, certificate, form or other document given, made or otherwise published by the censor or appeal censor pursuant to an arrangement made under section 5 a reference to a film shall, if the film is a video tape, be taken to be a reference to a video tape for the purposes of this Act.

PART II—ADMINISTRATION OF ACT

Report of Committee

4. (1) The Minister may refer to the Committee any matters arising out of the administration of this Act for its report on that matter.

(2) The Committee shall include in its report to the Minister the reasons for and matters taken into consideration in formulating its decision and each member of the Committee may make an individual report on the matter referred to the Committee.

(3) In this section “Committee” means the State Advisory Committee on Publications appointed under section 7 of the *Indecent Publications and Articles Act 1902*.

Arrangement with Commonwealth

5. (1) The Governor may arrange with the Governor-General of the Commonwealth for the exercise and discharge by officers or authorities of the Commonwealth, on behalf of the State, of the function of a censor of video tapes or of an appeal censor of video tapes with respect to the classification of video tapes under this Act.

(2) An agreement relating to an arrangement under this section may make provision for all or any matters necessary or convenient to be provided for or incidental to carrying out the arrangement and shall contain a provision to the effect that the arrangement may be terminated by the Governor at any time.

(3) An agreement under this section shall have effect according to its tenor.

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

Other arrangements for appointment of censor, etc.

6. (1) Where there is no arrangement in operation under section 5, a censor and an appeal censor may be appointed under the *Public Service Act 1978*.

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

PART III—CLASSIFICATION

Application for classification

7. (1) An application for classification of a video tape may be made to the censor by any person.

(2) An application for classification of a video tape—

- (a) shall be in or to the effect of the form approved by the censor;
- and

- (b) shall be lodged with the censor together with—
- (i) a synopsis of the video tape;
 - (ii) a copy of any advertisement proposed to be used in relation to the video tape; and
 - (iii) the prescribed fee.

Screening of video tapes for purpose of classification

8. (1) The censor may require a video tape that is the subject of an application for classification to be screened in accordance with this section.

(2) Where the censor requires a video tape to be screened, the censor may require the person who applied for classification of the video tape to lodge a copy of the video tape with the censor, which the censor may retain for such period as the censor may determine.

(3) Where the censor requires a video tape to be screened, the video tape shall be screened as and when required by the censor and the screening shall be carried out at the risk of the person who applied for classification of the video tape.

(4) At the screening of a video tape in accordance with this section, the person who applied for classification of the video tape, not more than 4 representatives of that person and such other persons as are approved by the censor are entitled to be present.

(5) Subject to this section, the censor may fix the procedure for the determination of an application for classification of a video tape.

(6) The provisions of this section apply to the determination of an application for review of a classification under section 15 and the determination of an application for revocation of a classification under section 16 as if a reference in this section—

- (a) to the censor were a reference to the appeal censor; and
- (b) to an application for classification were a reference to an application for review or revocation, as the case may be.

Classification of video tapes

9. (1) Subject to subsection (2) the censor shall classify a video tape for which an application for classification has been made—

- (a) as a “G” video tape, where the censor is of the opinion that the video tape is suitable for general exhibition;
- (b) as a “PG” video tape, where the censor is of the opinion that the video tape should be viewed by a person under the age of 15 years only with the guidance of a parent or guardian of that person;
- (c) as an “M” video tape, where the censor is of the opinion that the video tape cannot be recommended for viewing by persons under the age of 15 years; or
- (d) as an “R” video tape, where the censor is of the opinion that the video tape is unsuitable for viewing by a minor.

(2) The censor shall refuse to classify a video tape for which an application for classification has been made where the video tape—

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult;
- (b) is a child abuse video tape;
- (c) describes, depicts, expresses or otherwise deals with sexual activity of any kind between a human being and an animal; or
- (d) promotes, incites or encourages terrorism.

(3) In subsection (2) (d) “terrorism” has the same meaning as in the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth.

Advertisements

10. The censor may approve, unconditionally or subject to conditions, or disapprove any advertisement relating to a video tape that is the subject of an application for classification.

Records

11. The censor shall keep a record of all decisions made by the censor under sections 9 and 10.

Notice of decision of censor

12. (1) Where, under section 9 or 10, the censor makes a decision in respect of a video tape or advertisement, as the case may be, the censor shall cause notice of the decision—

- (a) to be given in writing to the person who applied for classification of the video tape or approval of the advertisement; and
- (b) to be published—
 - (i) where there is an arrangement under section 5, in the Commonwealth Gazette; or
 - (ii) where there is no arrangement in operation under section 5, in the *Gazette*,

within 30 days after the day on which the decision was made.

(2) A decision referred to in subsection (1) shall take effect on the day on which notice of the decision is published in the Commonwealth Gazette or the *Gazette*, as the case may be, in accordance with that subsection.

Application for review of decision

13. (1) Where under section 9 or 10 the censor has made a decision in respect of a video tape or advertisement, as the case may be—

- (a) the person who applied for classification of the video tape or approval of the advertisement; or
- (b) the Minister,

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

(2) An application under subsection (1) shall be in writing signed by, or on behalf of, the applicant and shall be lodged with the appeal censor—

- (a) where the applicant is a person referred to in subsection (1) (a)—within 30 days after the day on which the person received written notice of the decision to which the application relates; or
- (b) where the applicant is the Minister—at any time after the day on which the notice of the decision was published in the Commonwealth Gazette or the *Gazette*, as the case may be.

(3) The prescribed fee is payable by an applicant, other than the Minister, on lodging an application under this section.

Notice of application for review

14. Where—

- (a) under section 9 or 10, the censor has made a decision in respect of a video tape or advertisement; and
- (b) the Minister applies to the appeal censor for a review of the decision,

the appeal censor shall cause notice in writing of the application for review to be given to the person who applied to the censor for classification of the video tape or approval of the advertisement, as the case may be.

Review of classification

15. (1) Where an application for review of a decision of the censor is made to the appeal censor, the appeal censor shall review the decision and may make a decision—

- (a) confirming the decision of the censor; or
- (b) setting aside the decision and classifying or refusing to classify, the video tape, or approving, unconditionally or subject to conditions, or disapproving any advertisement relating to the video tape, as the appeal censor thinks fit.

(2) Where the appeal censor makes a decision under this section, the appeal censor shall, within 14 days after the day on which the decision was made—

- (a) notify the applicant in writing of the decision; and
- (b) cause a notice setting out the terms of the decision to be published—
 - (i) where there is an arrangement in operation under section 5, in the *Commonwealth Gazette*; or
 - (ii) where there is no arrangement in operation under section 5, in the *Gazette*.

(3) A decision made by the appeal censor under this section shall take effect on the day on which notice of the decision is published in the *Commonwealth Gazette* or the *Gazette*, as the case may be, in accordance with subsection (2).

(4) The appeal censor shall keep a record of all decisions made by the appeal censor under this section.

Revocation of classification of video tape

16. (1) Subject to this section, the appeal censor may—

- (a) on application made in accordance with this section by—
 - (i) the person who applied for the classification of a video tape in accordance with section 7; or
 - (ii) the Minister; or
- (b) on the motion of the appeal censor,

revoke the classification of a video tape or a decision refusing to classify a video tape.

(2) An application under this section—

- (a) shall be in writing signed by, or on behalf of, the applicant; and

(b) shall not be lodged with the appeal censor at any time before the expiration of—

- (i) 12 months from the day on which the classification or decision to which the application relates took effect; or
- (ii) where the appeal censor has previously disposed of an application under this section in respect of the video tape, 12 months from the day on which the last application was disposed of.

(3) The appeal censor shall not, on the motion of the appeal censor, revoke a classification or a decision at any time before the expiration of the period of 12 months from the day on which the classification or decision took effect.

(4) The appeal censor shall not revoke a classification or a decision unless the appeal censor is satisfied that it is proper to do so, having regard to the provisions of this Part relating to the classification of video tapes.

(5) Where the appeal censor revokes the classification of a video tape or a decision refusing to classify a video tape, the appeal censor shall, within 14 days after the day on which the classification or decision is revoked, cause notice of revocation under this section of the classification or decision to be published—

- (a) where there is an arrangement in operation under section 5, in the Commonwealth Gazette; or
- (b) where there is no arrangement in operation under section 5, in the *Gazette*.

(6) The revocation of the classification of a video tape or a decision refusing to classify a video tape shall take effect on the day on which notice of the revocation is published in the Commonwealth Gazette or the *Gazette*, as the case may be, in accordance with subsection (5).

Ministerial control

17. (1) Notwithstanding that any video tape has been exempted from the operation of this Act under section 39 or classified by the censor or appeal censor, and regardless of the classification assigned to that video tape or of any application for review or revocation relating to the classification, the Minister may, if he is satisfied that such order is

necessary in the public interest, order that an exemption specified under section 39 or a classification assigned to a video tape under section 9 shall be ineffective in the State and if such an order is made—

- (a) the video tape shall bear a classification assigned to it by the Minister in lieu of a classification assigned under section 9; or
- (b) where the Minister refrains from assigning a classification to the video tape, it shall be taken to be an unclassified video tape for the purposes of this Act.

(2) Where the Minister makes an order under subsection (1), the Minister shall, within 14 days after the day on which the order was made, cause notice of the order to be published in the *Gazette*.

(3) An order made by the Minister under subsection (1) shall take effect on the day on which notice of the order is published in the *Gazette*.

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

Retention of video tapes by censor

18. Where a video tape in respect of which an application for classification has been made is not classified, the video tape or any part of the video tape and any advertisement lodged with the video tape—

- (a) shall be retained by the censor or appeal censor, as the case may be; or
- (b) if the censor or appeal censor is satisfied that the video tape or part and any such advertisement will forthwith be disposed of in such manner as the censor or appeal censor, as the case be, directs, may be returned to the applicant.

Effect of alteration of classified video tape

19. A classified video tape that has been subjected to an alteration or addition after it has been classified shall, unless the censor or appeal censor has approved of the alteration or addition in writing, be deemed to be an unclassified video tape.

PART IV—ADVERTISING AND SUPPLY OF VIDEO TAPES

Use of advertisements

20. (1) A person shall not use any advertisement approved under Part III in relation to a video tape otherwise than in the form in which the advertisement was so approved, unless the censor or appeal censor has approved, in writing, of that use.

(2) A person shall not use any advertisement approved under Part III in relation to a video tape except in accordance with the conditions, if any, to which the approval is subject.

(3) A person shall not sell or distribute a video tape (whether the video tape is classified or unclassified) in association with any advertisement which has been disapproved under Part III.

(4) A person shall not use an advertisement approved under Part III in relation to a video tape unless the advertisement contains a statement or symbol in the prescribed form denoting the classification assigned to the video tape under Part III.

Penalty: \$10 000 in the case of a corporation and \$2 000 in any other case.

Advertisements for unclassified video tapes prohibited

21. (1) A person shall not publish an advertisement in relation to an unclassified video tape.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction—

(a) in the case of the publication of an advertisement for an unclassified video tape that is, after the date of the offence, classified as a “G” video tape—by a fine not exceeding \$500 in the case of a corporation or by a fine not exceeding \$100 in any other case;

(b) in the case of the publication of an advertisement for an unclassified video tape that is, after the date of the offence, classified as a “PG” video tape—by a fine not exceeding \$1 000 in the case of a corporation or by a fine not exceeding \$200 in any other case;

- (c) in the case of the publication of an advertisement for an unclassified video tape that is, after the date of the offence, classified as an “M” video tape—by a fine not exceeding \$2 000 in the case of a corporation or by a fine not exceeding \$400 in any other case;
- (d) in the case of the publication of an advertisement for an unclassified video tape that is, after the date of the offence, classified as an “R” video tape—by a fine not exceeding \$5 000 in the case of a corporation or by a fine not exceeding \$1 000 in any other case; or
- (e) in the case of the publication of an advertisement for a video tape—
 - (i) that has been refused classification; or
 - (ii) that was unclassified as at the date of the offence and that is, after that date, refused classification,

by a fine not exceeding \$15 000 in the case of a corporation, or by a fine not exceeding \$4 000 or by imprisonment for a term not exceeding 12 months in any other case.

(3) Proceedings for an offence under subsection (1) in respect of the publication of an advertisement for an unclassified video tape (other than a video tape which has been refused classification) shall not be instituted until the video tape has been classified or refused classification.

False advertising of classified video tapes prohibited

22. A person shall not publish an advertisement in relation to a video tape which indicates—

- (a) that the video tape is unclassified; or
- (b) that the video tape has a classification other than the classification it has been assigned under Part III.

Penalty: \$5 000 in the case of a corporation and \$1 000 in any other case.

Prescribed markings on containers

23. (1) A person shall not display, for the purposes of sale, or sell a video tape, or cause or permit a video tape to be so displayed or sold, unless the container, wrapping and casing in which the video tape is so displayed or sold bears the prescribed markings in respect of the classification assigned to the video tape under Part III.

Penalty: \$5 000 in the case of a corporation and \$1 000 in any other case.

(2) A person shall not display, for the purposes of sale, or sell a video tape, or cause or permit a video tape to be so displayed or sold, if the container, wrapping and casing in which the video tape is so displayed or sold bears the prescribed markings in respect of a classification other than the classification assigned to the video tape under Part III or a marking or other matter that indicates or suggests that the video tape has been assigned a classification other than the classification assigned to the video tape under Part III.

Penalty: \$10 000 in the case of a corporation, and \$2 000 or imprisonment for 6 months in any other case.

Display of notice on premises

24. A person shall not display, for the purposes of sale, or sell a video tape on or from any premises unless there is displayed on those premises a notice which complies with the regulations.

Penalty: \$2 000 in the case of a corporation and \$1 000 in any other case.

Classified video tapes containing advertisements for other video tapes

25. A person shall not sell, or cause or permit to be sold, a classified video tape that contains an advertisement relating to—

- (a) where the video tape is classified as a “G” video tape—a video tape classified as a “PG” video tape, an “M” video tape or an “R” video tape or an unclassified video tape;
- (b) where the video tape is classified as a “PG” video tape—a video tape classified as an “M” video tape, an “R” video tape or an unclassified video tape;

- (c) where the video tape is classified as an “M” video tape—a video tape classified as an “R” video tape or an unclassified video tape;
or
- (d) where the video tape is classified as an “R” video tape—an unclassified video tape.

Penalty: \$10 000 in the case of a corporation and \$2 000 in any other case.

Provision of “R” video tapes to minors prohibited

26. (1) Unless he is a parent or guardian of the minor, a person shall not sell or give a video tape classified as an “R” video tape to a minor.

Penalty: \$15 000 in the case of a corporation, and \$4 000 or imprisonment for 12 months in any other case.

(2) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the defendant or the defendant’s servant or agent had reasonable grounds for believing, and did in fact believe, that the minor in respect of whom the alleged offence was committed had attained the age of 18 years at the date of the alleged offence.

Purchase of certain video tapes by minors prohibited

27. A minor who has attained the age of 15 years shall not obtain by way of sale to the minor a video tape classified as an “R” video tape or a video tape which has been refused classification.

Penalty: \$200.

Display and sale of unclassified video tapes prohibited

28. (1) A person shall not display, for the purposes of sale, or sell an unclassified video tape or cause or permit an unclassified video tape to be so displayed or sold.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction—

- (a) in the case of an unclassified video tape that is, after the date of the offence, classified as a “G” video tape—by a fine not exceeding \$500 in the case of a corporation or by a fine not exceeding \$100 in any other case;

- (b) in the case of an unclassified video tape that is, after the date of the offence, classified as a "PG" video tape—by a fine not exceeding \$1 000 in the case of a corporation or by a fine not exceeding \$200 in any other case;
- (c) in the case of an unclassified video tape that is, after the date of the offence, classified as an "M" video tape—by a fine not exceeding \$2 000 in the case of a corporation or by a fine not exceeding \$400 in any other case;
- (d) in the case of an unclassified video tape that is, after the date of the offence, classified as an "R" video tape—by a fine not exceeding \$5 000 in the case of a corporation or by a fine not exceeding \$1 000 in any other case;
- (e) in the case of a video tape—
 - (i) that has been refused classification; or
 - (ii) that was unclassified as at the date of the offence and that is, after that date, refused classification,
by a fine not exceeding \$15 000 in the case of a corporation, or by a fine not exceeding \$4 000 or by imprisonment for a term not exceeding 12 months in any other case; or
- (f) in the case of a video tape that depicts or otherwise deals with child abuse—by a fine not exceeding \$100 000 in the case of a corporation, or by a fine not exceeding \$25 000 or by imprisonment for a term not exceeding 5 years in any other case.

(3) Proceedings for an offence under subsection (1) in respect of an unclassified video tape (other than a video tape which has been refused classification) shall not be instituted until the video tape has been classified or refused classification.

Display and sale of improperly marked unclassified video tapes prohibited

29. A person shall not display, for the purposes of sale, or sell an unclassified video tape, or cause or permit an unclassified video tape to be so displayed or sold, if the container, wrapping or casing in which the video tape is so displayed or sold bears a marking or other matter that indicates or suggests that the video tape has been classified.

Penalty: \$15 000 in the case of a corporation, and \$4 000 or imprisonment for 12 months in any other case.

Display of video tapes classified as “R” restricted

29A. A person shall not display, for the purposes of sale, a video tape that has a classification of “R”, except in a restricted area.

Penalty: \$500 in the case of a corporation, and \$100 in any other case.

Keeping together of certain classified and unclassified video tapes prohibited

30. A person shall not, on any premises on or from which classified video tapes are displayed for the purposes of retail sale, or sold by way of retail sale, keep or have possession of any unclassified video tapes.

Penalty: \$15 000 in the case of a corporation, and \$4 000 or imprisonment for 12 months in any other case.

PART V—EXHIBITION OF VIDEO TAPES**Matters constituting exhibition of video tapes**

31. In any proceedings under this Act, without affecting the liability of any other person for any offence against this Act, a person shall be taken to exhibit a video tape in a public place if—

- (a) the person conducts the exhibition of the video tape in the public place; or
- (b) the person has the superintendence or management of the public place in which the video tape is exhibited.

Prohibition of exhibition of unclassified video tapes

32. (1) A person shall not exhibit an unclassified video tape in a public place or cause an unclassified video tape to be so exhibited.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction—

- (a) in the case of an unclassified video tape that is, after the date of the offence, classified as a “G” video tape—by a fine not exceeding \$500 in the case of a corporation or by a fine not exceeding \$100 in any other case;
- (b) in the case of an unclassified video tape that is, after the date of the offence, classified as a “PG” video tape—by a fine not exceeding \$1 000 in the case of a corporation or by a fine not exceeding \$200 in any other case;

- (c) in the case of an unclassified video tape that is, after the date of the offence, classified as an “M” video tape—by a fine not exceeding \$2 000 in the case of a corporation or by a fine not exceeding \$400 in any other case;
- (d) in the case of an unclassified video tape that is, after the date of the offence, classified as an “R” video tape—by a fine not exceeding \$5 000 in the case of a corporation or by a fine not exceeding \$1 000 in any other case; or
- (e) in the case of a video tape—
 - (i) that has been refused classification; or
 - (ii) that was unclassified as at the date of the offence and that is, after that date, refused classification,

by a fine not exceeding \$15 000 in the case of a corporation, or by a fine not exceeding \$4 000 or by imprisonment for a term not exceeding 12 months in any other case.

(3) Proceedings for an offence under subsection (1) in respect of an unclassified video tape (other than a video tape which has been refused classification) shall not be instituted until the video tape has been classified or refused classification.

Prohibition of exhibition of certain video tapes in presence of minors

33. (1) A person shall not exhibit, in a public place or a school, an “R” video tape or a video tape which has been refused classification or cause an “R” video tape or a video tape which has been refused classification to be so exhibited, if a minor who has attained the age of 2 years is present at the whole or any part of the exhibition of the video tape.

Penalty: \$15 000 in the case of a corporation, and \$4 000 or imprisonment for 12 months in any other case.

(2) A person is guilty of an offence under subsection (1) in respect of each minor to whom subsection (1) applies who is present at the exhibition of the video tape.

(3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves—

- (a) that the defendant took all such steps as were reasonable in the circumstances to avoid being guilty of the alleged offence; or
- (b) that the defendant or the defendant's servant or agent had reasonable grounds for believing, and did in fact believe, that the minor in respect of whom the alleged offence was committed had attained the age of 18 years, or had not attained the age of 2 years, at the date of the alleged offence.

Prohibition of attendance of minors at exhibition of certain video tapes

34. A minor who has attained the age of 15 years shall not attend the whole or any part of the exhibition in a public place of an "R" video tape or a video tape which has been refused classification.

Penalty: \$200.

Prohibition of permitting attendance of minors at exhibition of certain video tapes

35. (1) Subject to subsection (2), a person who has attained the age of 18 years shall not cause, permit or allow a minor who has attained the age of 2 years to be present at a whole or any part of the exhibition, in a public place, of an "R" video tape or a video tape which has been refused classification.

Penalty: \$4 000 or imprisonment for 12 months.

(2) A person is not guilty of an offence under subsection (1)—

- (a) if the person is the person exhibiting the video tape referred to in that subsection; or
- (b) if the person is the servant or agent of the person exhibiting the video tape referred to in that subsection.

(3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the defendant had reasonable grounds for believing, and did in fact believe, that the minor in respect of whom the alleged offence was committed had attained the age of 18 years, or had not attained the age of 2 years, at the date of the alleged offence.

PART VI—MISCELLANEOUS

Procurement of children for child abuse video tape prohibited

36. A person shall not invite or procure or attempt to invite or procure or cause a child to be in any way concerned in the making of a child abuse video tape.

Penalty: \$100 000 in the case of a corporation, and \$25 000 or imprisonment for 5 years in any other case.

Possession of certain video tapes prohibited

37. (1) A person shall not possess a video tape—

(a) that has been refused classification; or

(b) that—

(i) is a child abuse video tape;

(ii) describes, depicts, expresses or otherwise deals with sexual activity of any kind between a human being and an animal; or

(iii) promotes, incites or encourages terrorism.

Penalty: \$15 000 in the case of a corporation, and \$4 000 or imprisonment for 12 months in any other case.

(2) In subsection (1) (b) (iii) “terrorism” has the same meaning as in the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth.

Liability

38. No liability attaches to the censor, the appeal censor or any other person for any act or omission by him or on his part that occurred in good faith and in the performance or discharge or purported performance or discharge of his functions under this Act.

Exemptions

39. (1) The Minister may, by notice published in the *Gazette*, exempt a person, or a person of a class or description of persons, specified in the notice from the operation of such of the provisions of this Act, subject to such conditions, if any, as are specified in the notice.

(2) The censor or the appeal censor may, in any particular case, by notice in writing under the hand of the censor or the appeal censor, as the case may require, exempt, subject to such conditions, if any, as may be specified in the notice, any video tape from the operation of this Act to the extent specified in the notice.

(3) Subject to section 17 and notwithstanding any other provision of this Act, it is not an offence for a person to do any act or thing that falls within the scope of an exemption under subsection (1) or (2) and that is done in accordance with the conditions, if any, to which that exemption is subject.

Powers of inspection, etc. without search warrant

40. (1) A member of the police force or a person authorized in writing by the Minister, may for the purposes of this Act, at all reasonable times, enter premises where a person carries on or intends to carry on the business of selling video tapes and—

- (a) inspect any video tapes displayed or kept on the premises and, if he is a member of the police force, seize any such video tape which is or appears to be an unclassified video tape; and
- (b) examine all registers, books, records and documents on the premises.

(2) A person shall not refuse or fail to admit an authorized person or member of the police force who requires entry to premises under this section, or obstruct or delay any such person, or cause or permit the person to be obstructed or delayed, in the exercise of that person's powers under this section.

Penalty: \$500.

(3) The Minister shall issue a notice of authorization to each person authorized in writing by the Minister under this section and the holder shall produce such notice whenever so required by a person in charge of premises in respect of which the authorized person has exercised or is about to exercise his powers under this section.

(4) The Minister may by instrument in writing delegate to any person any of his functions under this section other than this power of delegation.

Search warrants

41. (1) Where a complaint is made on oath to a justice to the effect that the complainant has reason to suspect, and believes, that this Act has been or is being contravened in any premises, the justice may, if satisfied that the belief of the complainant is well founded, authorize by search warrant issued by him any member of the police force to enter those premises, to search for and seize anything found therein or thereon that may reasonably be suspected of being connected with an offence which has been, is being or is to be committed against this Act and on those premises or elsewhere to screen, by means of any suitable apparatus or equipment (whether found on the premises or not) any video tape found in or on the premises.

(2) For the purposes of subsection (1), a thing is connected with an offence if it is—

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

**Forfeiture of video tapes, etc.,
following seizure**

42. (1) A thing which has been seized under section 40 (1) or under a search warrant issued under section 41 shall be returned to the premises in or on which it was seized unless, not later than 2 months after the seizure—

- (a) proceedings are commenced against a person for an offence against this Act with respect to the thing; or
- (b) a member of the police force reports the seizure to a justice.

(2) On the reporting under subsection (1) of the seizure of a thing to a justice, the justice shall issue a summons calling on the person who, at the time of the seizure of the thing, was occupying or using the premises entered under section 40 (1) or by virtue of the search warrant issued under section 41 to appear before a court of petty sessions to show cause why the thing and any other thing so seized should not be forfeited to the Crown.

(3) A court before which a summons issued under subsection (2) is returned may order that there be forfeited to the Crown—

- (a) such of the things to which the summons relates as are not claimed by the person summoned, or by some other person; or
- (b) where the person summoned, or some other person, claims any of the things, such of the things to which the summons relates as, in the opinion of the court, have been or are intended to be used for the purpose of committing an offence against this Act and which it is desirable should be so forfeited.

(4) Subject to subsection (5), a thing which is ordered to be forfeited to the Crown under this section may be destroyed or otherwise dealt with, as instructed by the Minister.

(5) Where the court has ordered a thing to be forfeited to the Crown under this section, the Minister shall not instruct the destruction of that thing under subsection (4) 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.

Return of seized video tapes, etc.

43. A court of petty sessions shall order the return of a thing seized under section 40 (1) or under a search warrant issued under section 41—

- (a) if the court dismisses the proceedings commenced for an offence against this Act with respect to the thing; or
- (b) if, on the return before it of a summons issued under section 42 (2) with respect to the thing, it does not form the opinion referred to in section 42 (3),

and the thing is claimed by the person summoned or by some other person.

Evidence

44. (1) In any proceedings for an offence against this Act, a certificate signed or purporting to be signed by the censor stating—

- (a) that a video tape has been classified;
- (b) the classification of a video tape;
- (c) that a video tape has been refused classification;
- (d) that a video tape has not been classified;
- (e) that an advertisement in relation to a video tape has been approved;
- (f) that an advertisement in relation to a video tape has been refused approval; or
- (g) that an advertisement in relation to a video tape has not been approved,

is *prima facie* evidence of the matter stated in the certificate.

(2) In any proceedings for an offence against this Act, a copy of the *Gazette* containing a notice caused to be published under section 5 in respect of the making of an arrangement under section 5, or an extract from the *Gazette* of that notice (being an extract printed or purporting to have been printed by the Government Printer) is *prima facie* evidence that the arrangement was duly made and that the arrangement was in operation at the time of the alleged offence.

(3) In any proceedings for an offence against this Act, a certificate signed or purporting to be signed by the Minister stating—

- (a) that an arrangement was duly made under section 5 and that the arrangement was in operation on any day or during any period specified in the certificate; or
- (b) that 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 *prima facie* evidence of the matter stated in the certificate.

Offences by corporations

45. (1) Where a corporation commits an offence against this Act, each person, being a director of the corporation or a person concerned in the management of the corporation, shall be deemed to have committed the same offence unless the person satisfies the court that—

- (a) the corporation committed the offence without the person's knowledge;
- (b) the person was not in a position to influence the conduct of the corporation in relation to the commission of the offence; or
- (c) the person, being in such a position, used all due diligence to prevent the commission of the offence by the corporation.

(2) A person may be proceeded against and convicted pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by this Act on any corporation by which an offence is actually committed.

Summary procedure for offences

46. Proceedings for an offence against this Act shall be disposed of summarily by a magistrate in petty sessions.

Forfeiture of video tapes, etc., on conviction

47. (1) Where a person is convicted of an offence against this Act constituted by a contravention of section 23, 25, 28, 29, 32 or 37 the court by which the conviction is recorded may order that there shall be forfeited to the Crown such video tapes specified in the order as were, at the time of the commission of the offence, in the possession or apparently under the control of the person.

(2) Subject to subsection (3) a thing which is ordered to be forfeited to the Crown under this section may be destroyed or otherwise dealt with, as instructed by the Minister.

(3) Where a thing is ordered to be forfeited to the Crown under this section, the Minister shall 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.

Regulations

48. (1) The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1) the Governor may make regulations—

- (a) providing for the registration of persons selling video tapes;
- (b) prescribing forms for use under this Act;

- (c) prescribing fees for the purposes of this Act and regulating and controlling the payment and collection of the same;
- (d) imposing, for a breach of a regulation, a penalty up to a maximum of—
 - (i) in the case of a corporation—\$2 000; and
 - (ii) in the case of an individual—\$1 000.

Classification of certain video tapes

49. (1) Notwithstanding any other provision of this Act, where, after the date on which the *Classification of Publications Ordinance 1983* of the Australian Capital Territory came into operation and before the appointed day, a video tape has been classified under that Ordinance and the classification has not been revoked under that Ordinance before the appointed day, the video tape shall be deemed—

- (a) in the case of a video tape classified under that Ordinance as a “G” film—to be classified as a “G” video tape;
- (b) in the case of a video tape classified under that Ordinance as a “PG” film—to be classified as a “PG” video tape;
- (c) in the case of a video tape classified under that Ordinance as an “M” film—to be classified as an “M” video tape;
- (d) in the case of a video tape classified under that Ordinance as an “R” film—to be classified as an “R” video tape; and
- (e) in the case of a video tape classified under that Ordinance as an “X” film—to be an unclassified video tape,

for the purposes of this Act.

(2) Where, after the date on which the *Classification of Publications Ordinance 1983* of the Australian Capital Territory came into operation and before the appointed day an advertisement in relation to a video tape, other than a video tape classified under that Ordinance as an “X” film, has been approved under that Ordinance and the approval has not been revoked under that Ordinance before the appointed day, the advertisement shall be deemed to have been approved under section 10 for the purposes of this Act.

(3) In this section “appointed day” means the day on which this Act is proclaimed to come into operation.

PART VII—*INDECENT PUBLICATIONS AND ARTICLES ACT 1902***Principal Act**

50. In this Part the *Indecent Publications and Articles Act 1902** is referred to as the principal Act.

[*Reprinted as approved 1 September 1975 and amended by Acts Nos. 28 and 45 of 1983.]

Section 1A amended

51. Section 1A of the principal Act is amended in subsection (1) by deleting paragraph (a) of the definition of “article” and substituting the following paragraph—

“ (a) any cinematographic or other type of film or slide and any other form of recording from which a visual image can be produced; ”.

Section 1B inserted

52. After section 1A of the principal Act the following section is inserted—

Application of Act to video tapes

“ 1B. This Act does not apply to video tapes within the meaning of the *Video Tapes Classification and Control Act 1987*. ”.

Section 6 amended

53. Section 6 of the principal Act is amended in subsection (1) in the definition of “publication” by deleting “videotape, videodisc,”.

Section 10 amended

54. Section 10 of the principal Act is amended in subsection (1) (a) (iii) by deleting “videotape, videodisc,”.
