



Western Australia

Classification (Publications, Films and Computer Games) Enforcement Act 1996

Classification (Publications, Films and Computer Games) Enforcement Act 1996

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Exhibiting a film in a public place, defined	5
5.	Sound recordings, general provisions about	6
6.	Application of Act	6
7.	Films consisting only of classified films	6

Part 7 — Offences

Division 1 — Indecent or obscene articles

57.	Division does not apply to certain articles	7
58.	Literary etc. merit or <i>bona fide</i> medical article, defence of	7
59.	Indecent or obscene articles, offences as to	7

Division 2 — Publications

61.	Sale or supply of submittable or RC publications	8
62.	Possession or copying of RC publications	9
63.	Possession or copying of submittable publications with intention of selling	9
64.	Category 1 restricted publications, offences as to	10
65.	Category 2 restricted publications, offences as to	11
65A.	Sale or supply of publications contrary to conditions	12
65B.	Consumer advice for Unrestricted publications	12

Contents

65C.	Misleading or deceptive markings	12
65D.	Sale of restricted publications to minors	13
65E.	Leaving certain publications in certain places	14
	Division 3 — Films	
66.	Exhibition of film in public place, offences as to	15
67.	Notice about classifications for films to be displayed at cinemas etc.	16
68.	RC films not to be exhibited	16
69.	X 18+ films, exhibition of	16
70.	R 18+ and MA 15+ films, exhibition of	17
71.	Attendance of minor at RC, X 18+ or R 18+ films	18
72.	Attendance of minor at MA 15+ film	18
73.	Unclassified, RC and X 18+ films, sale of	19
74.	Classified films, sale of	20
75.	Notice about classifications for films to be displayed at place of sale	20
76.	Markings etc. on films for sale, offences as to	20
77.	Unclassified, RC or X 18+ films not to be kept where classified films are sold	21
78.	R 18+ films, containers etc., display of in public	22
79.	Sale or supply of certain films to minors	22
80.	Leaving certain films in certain places	23
81.	Possessing or copying certain films	23
	Division 4 — Computer games	
82.	Selling or demonstrating computer games in public place	24
83.	Notice about classifications for computer games to be displayed at place of sale etc.	24
84.	RC computer games, sale etc. of	25
85.	MA 15+ computer games, demonstration of	25
85A.	MA 15+ computer games, containers etc., display of in public	26
86.	Markings etc. on computer games, offences as to	26
87.	Unclassified or RC computer games not to be kept where classified computer games are sold etc.	28
88.	Sale or supply of certain computer games to minors	28
89.	Possessing or copying certain computer games	28
	Division 5 — Advertisements	
90.	Certain advertisements not to be published	29

Contents

91.	Certain films etc. not to be advertised	30
92.	Which advertisements of films etc. can be screened with feature films	31
93.	Advertisements for R 18+ or MA 15+ films, screening of	32
94.	Classified films not to be sold with certain advertisements	33
95.	Classified computer games not to be sold with certain advertisements	34
96.	Illegal advertisements for classified articles not to be published	35
97.	Misleading or deceptive advertisements	36
97A.	Advertising that Category 1 or 2 restricted publications are for sale etc.	37
98.	Classification symbols etc. to be published with advertisements	38
	Division 6 — Computer services	
99.	Terms used	38
100.	Codes of practice, approval of etc.	39
101.	Objectionable material, offences as to	40
102.	Restricted material, offences as to	41
	Part 7A — Call-in provisions	
102A.	Calling in submittable publications etc. for classification	42
102B.	Calling in films for classification	43
102C.	Calling in computer games for classification	43
102D.	Calling in advertisements for submittable publications etc.	45
102E.	Calling in publication, film or computer game for reclassification	46
102F.	Calling in publication, film or computer game for review of classification	47
	Part 8 — Exemptions and exceptions	
103.	Supply etc. for classification etc. purposes not offence under Part 7	48
104.	Offences as to possession, defences to	48
105.	Articles and computer services, exemptions for	49

Contents

106.	Approved organizations, exemptions for as to specific films etc.	49
107.	Ministerial directions or guidelines	50
108.	Organizations, approval of	50
109.	Appeals against certain decisions of Director	52
110.	Publication of certain films etc. to prescribed person etc.	53

Part 9 — Enforcement

Division 1 — General matters

111.	Interpretation	54
112.	Entry, inspection and seizure without warrant	54
113.	Obstruction	55
114.	False or misleading statements	55
115.	Liability of bodies corporate and their directors etc.	55
116.	Prosecutions, time for commencing	56
117.	Forfeiture	57
117A.	Forfeiture of copies of seized publications, films and computer games	59
117B.	Classification of seized items at request of accused	61

Division 2 — Infringement notices

117C.	Term used: designated person	62
117D.	Giving of infringement notice	62
117E.	Content of infringement notice	62
117F.	Extension of time to pay modified penalty	63
117G.	Withdrawal of infringement notice	63
117H.	Benefit of paying modified penalty	63
117I.	Application of penalties collected	64
117J.	Designated persons, appointment of	64

**Part 11 — Registration of persons
and premises**

128A.	Registrar	66
129.	Registering publishers of Category 1 or 2 restricted publications	66
130.	Registering premises where Category 1 or 2 restricted publications are published	67
131.	Applications for registration or renewal, form of	67
132.	Notice of decision on registration application	68
133.	Certificates of registration	68

134.	Duration of registration	68
135.	Register	69
136.	Change of particulars	70

Part 12 — General

140.	Power to demand name, age and address	71
141.	Evidentiary provisions to facilitate proof	72
141A.	Proof of classification by agreement	73
142.	Protection from personal liability	76
143.	Regulations	77

**Part 13 — Transitional, savings,
consequential amendments and
repeals**

144.	Term used: commencement	78
145.	Pending applications	78
146.	Savings provisions for publications	78
147.	Transitional and savings provisions for films	78
148.	Transitional and savings provisions for videos	79
149.	Transitional provisions for computer games	80
151.	Savings provisions for registration	81
152A.	Advertisements for unclassified films	81
153.	Repeals	82

Notes

Compilation table	83
Provisions that have not come into operation	84

Defined Terms

Western Australia

Classification (Publications, Films and Computer Games) Enforcement Act 1996

An Act to provide for 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.

[Long title amended by No. 30 of 2003 s. 4.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*¹.

[Section 1 amended by No. 10 of 2006 s. 4(1).]

2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

3. Terms used

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 has the same meaning as in the Commonwealth Act;

advertising scheme means the scheme determined from time to time under section 31(1) of the Commonwealth Act;

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

approved form means a form approved under section 8A of the Commonwealth Act;

article includes —

- (a) a publication; and
- (b) a film; and
- (c) a computer programme and associated data; and
- (d) a photograph; and
- (e) an object; and

(f) a sound recording; and

(g) an advertisement for any article;

authorised person means a person appointed under section 112(1);

Board means the Classification Board established by the Commonwealth Act;

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

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;

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

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

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

Commonwealth Gazette means the Commonwealth of Australia Gazette;

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

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

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

Convenor means the Convenor of the Review Board appointed under section 74 of the Commonwealth Act;

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

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

s. 3

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

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

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

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

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

film has the same meaning as in the Commonwealth Act;

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

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

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

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

publication has the same meaning as in the Commonwealth Act;

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; and
- (b) a place to which the public are admitted on payment of consideration; and
- (c) a place on private property that the public are allowed to use as a thoroughfare for pedestrians or vehicles, or both; and
- (d) a public place covered by water; and

(e) a school;

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

registered person means a person registered under section 129;

registered premises means premises registered under section 130;

Registrar means the Registrar appointed under section 128A;

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

sell includes —

- (a) sell, whether by retail or wholesale; and
- (b) let on hire; and
- (c) expose for sale or hire; and
- (d) distribute for sale or letting on hire; and
- (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;

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

[Section 3 amended by No. 30 of 2003 s. 5; No. 10 of 2006 s. 5 and 12; No. 21 of 2010 s. 7, 17 and 28.]

4. Exhibiting a film in a public place, defined

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

s. 5

- (b) supervises or manages the public place in which the film is exhibited.

5. Sound recordings, general provisions about

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.

6. Application of Act

This Act does not apply to —

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

[Section 6 inserted by No. 30 of 2003 s. 6.]

7. Films consisting only of classified films

Despite any other provision of this Act, a film —

- (a) that is contained on one device; and
- (b) that consists only of 2 or more classified films,

is to be treated, for the purposes of this Act, as if each of the classified films were on a separate device.

[Section 7 inserted by No. 21 of 2010 s. 18.]

[Parts 2-6 (s. 8-56) deleted by No. 30 of 2003 s. 7.]

Part 7 — Offences

Division 1 — Indecent or obscene articles

[Heading amended by No. 21 of 2010 s. 8.]

57. Division does not apply to certain articles

This Division does not apply to —

- (a) a publication that is classified Unrestricted, Category 1 restricted or Category 2 restricted; or
- (b) a film that is classified G, PG, M, MA 15+, R 18+ or X 18+; or
- (c) a computer game that is classified G, PG, M or MA 15+; or
- (d) an approved advertisement.

[Section 57 amended by No. 30 of 2003 s. 8; No. 10 of 2006 s. 13.]

58. Literary etc. merit or *bona fide* medical article, defence of

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.

59. Indecent or obscene articles, offences as to

- (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 \$10 000.
- (8) A person who contravenes subsection (2), (4), (5) or (6) commits an offence and is liable to a penalty of \$5 000.
- (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 person intended to sell the article and, in the absence of evidence to the contrary, is proof of that fact.

[Section 59 amended by No. 30 of 2003 s. 41(1).]

[60. Deleted by No. 21 of 2010 s. 9.]

Division 2 — Publications

[Heading inserted by No. 30 of 2003 s. 9.]

61. Sale or supply of submittable or RC publications

- (1) A person must not sell or supply —
 - (a) a submittable publication; or
 - (b) a publication classified RC.Penalty: \$15 000 or imprisonment for 18 months.

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

[Section 61 inserted by No. 30 of 2003 s. 9; amended by No. 84 of 2004 s. 82.]

62. Possession or copying of RC publications

A person must not possess or copy a publication classified RC.
Penalty: \$10 000.

[Section 62 inserted by No. 30 of 2003 s. 9.]

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

- (1) A person must not possess or copy a submittable publication with the intention of selling the publication or the copy.
Penalty: \$15 000 or imprisonment for 18 months.
- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.
- (3) In proceedings for an offence against subsection (1), evidence that a person had possession of, or made, 10 or more copies of a submittable publication is evidence that the person intended to sell the publication and, in the absence of evidence to the contrary, is proof of that fact.

[Section 63 inserted by No. 30 of 2003 s. 9.]

64. Category 1 restricted publications, offences as to

- (1) A person must not display, sell or supply a publication that is classified Category 1 restricted except in registered premises.
Penalty: \$2 000.
- (2) A person, other than a registered person, must not possess or copy a publication that is classified Category 1 restricted with the intention of selling the publication or copy.
Penalty: \$2 000.
- (3) In proceedings for an offence against subsection (2), evidence that a person had possession of, or made, 10 or more copies of a publication classified Category 1 restricted is evidence that the person intended to sell the publication and, in the absence of evidence to the contrary, is proof of that fact.
- (4) Subject to subsection (5), a person must not sell or supply a publication classified Category 1 restricted unless —
 - (a) on supply it is contained in a wrapper made of plain opaque material; and
 - (b) both the publication and the wrapper bear the determined markings.Penalty: \$2 000.
- (5) For the purposes of subsection (4), *plain* does not include the title of the publication.
- (6) If —
 - (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; or
 - (b) the Board revokes a classification for a publication under section 22B(3) of that Act,

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

[Section 64 inserted by No. 30 of 2003 s. 9.]

65. Category 2 restricted publications, offences as to

- (1) A person must not display, sell or supply a publication that is classified Category 2 restricted except in registered premises.
Penalty: \$5 000.
- (2) A person, other than a registered person, must not possess or copy a publication that is classified Category 2 restricted with the intention of selling the publication or copy.
Penalty: \$5 000.
- (3) In proceedings for an offence against subsection (2), evidence that a person had possession of, or made, 10 or more copies of a publication classified Category 2 restricted is evidence that the person intended to sell the publication and, in the absence of evidence to the contrary, is proof of that fact.
- (4) A person must not sell or supply a publication that is classified Category 2 restricted to a person unless that person has made a direct request for the publication.
Penalty: \$5 000.
- (5) A person must not sell or supply a publication that is classified Category 2 restricted unless it is contained in a package made of opaque material.
Penalty: \$5 000.
- (6) A person must not sell, supply or publish a publication that is classified Category 2 restricted unless both the publication and the package it is contained in bear the determined markings.
Penalty: \$5 000.
- (7) If —
 - (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; or
 - (b) the Board revokes a classification for a publication under section 22B(3) of that Act,it is sufficient compliance with subsection (6) for a period of 30 days after the decision to reclassify or revoke takes effect if the publication and the package bear the determined markings

applicable to the publication before that reclassification or revocation.

[Section 65 inserted by No. 30 of 2003 s. 9.]

65A. Sale or supply of publications contrary to conditions

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

Penalty: \$5 000.

[Section 65A inserted by No. 30 of 2003 s. 9.]

65B. Consumer advice for Unrestricted publications

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

Penalty: \$2 000.

[Section 65B inserted by No. 30 of 2003 s. 9.]

65C. Misleading or deceptive markings

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

Penalty: \$5 000.

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

Penalty: \$5 000.

- (3) If —

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

- (b) the Board revokes a classification for a publication under section 22B(3) of that Act,

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

[Section 65C inserted by No. 30 of 2003 s. 9.]

65D. Sale of restricted publications to minors

- (1) A person must not sell or supply to a minor a publication classified Category 2 restricted.

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

- (2) A person must not sell or supply to a minor a publication classified Category 1 restricted, unless the person is a parent or guardian of the minor.

Penalty: \$5 000.

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) to prove that the minor produced to the accused acceptable proof of age before the accused sold or supplied the publication to the minor and the accused believed on reasonable grounds that the minor was an adult.

- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) for the supply of a publication to a minor, to prove that the minor was employed by the person who supplied the publication and the supply took place in the course of that employment.

- (5) A minor who is 15 years of age or older must not buy a publication classified Category 1 restricted or Category 2 restricted, knowing that it is so classified.

Penalty: \$200.

[Section 65D inserted by No. 30 of 2003 s. 9; amended by No. 84 of 2004 s. 82.]

65E. Leaving certain publications in certain places

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

Penalty: \$10 000.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that —
- (a) since the offence was alleged to have been committed, the publication has been classified Unrestricted; or
 - (b) the accused believed on reasonable grounds that the publication was not a submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC, as the case may be; or
 - (c) in the case of a publication classified Category 1 restricted, the publication was displayed on registered premises and the publication and packaging complied with section 64(4); or
 - (d) in the case of a publication classified Category 2 restricted, the publication was displayed on registered premises and was not visible from outside those premises or by a minor in the premises.

- (3) A person must not leave on private premises, without the occupier's permission —
- (a) a submittable publication; or
 - (b) a publication classified Category 1 restricted, Category 2 restricted or RC.

Penalty: \$5 000.

- (4) It is a defence to a prosecution for an offence against subsection (3)(a) to prove that since the offence was alleged to

have been committed, the publication has been classified
Unrestricted.

- (5) It is a defence to a prosecution for an offence against subsection (3) to prove that the accused believed on reasonable grounds that the publication was not a submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC, as the case may be.

*[Section 65E inserted by No. 30 of 2003 s. 9; amended by
No. 84 of 2004 s. 82.]*

Division 3 — Films

66. Exhibition of film in public place, offences as to

- (1) A person must not exhibit a film in a public place unless the film —
- (a) is classified; and
 - (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: \$10 000.

- (2) Subsection (1) is not contravened by reason only of the exhibition of a classified film —
- (a) under a title different from that under which it is classified if it is contained on one device that consists only of 2 or more classified films; or
 - (b) with a modification referred to in section 21(2) of the Commonwealth Act.

[Section 66 amended by No. 30 of 2003 s. 41(2); No. 21 of 2010 s. 19.]

67. Notice about classifications for films to be displayed at cinemas etc.

- (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: \$1 000.

[(2) deleted]

[Section 67 amended by No. 30 of 2003 s. 40 and 41(2).]

68. RC films not to be exhibited

A person must not exhibit in any place —

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

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

[Section 68 amended by No. 30 of 2003 s. 41(2).]

69. X 18+ films, exhibition of

- (1) A person must not exhibit in a public place a film classified X 18+.

Penalty: \$10 000.

- (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 18+; or
- (b) a film classified X 18+.

Penalty: \$5 000.

- (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 18+; or

- (b) a film classified X 18+.

Penalty: \$5 000.

- (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.

[Section 69 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 14.]

70. R 18+ and MA 15+ films, exhibition of

- (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 18+ or MA 15+; or

- (b) a film classified R 18+ or MA 15+.

Penalty: \$2 000.

- (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 18+; or

- (b) a film classified R 18+,

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

Penalty: \$2 000.

- (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.

[Section 70 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 15.]

71. Attendance of minor at RC, X 18+ or R 18+ films

- (1) Any adult who knows that —
- (a) an unclassified film that would, if classified, be classified RC, X 18+ or R 18+; or
 - (b) a film classified RC, X 18+ or R 18+,
- is to be exhibited in a public place, must not permit a minor to attend the exhibition of the film.
- Penalty: \$5 000.
- (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 18+ or R 18+, knowing that the film is so classified.
- Penalty: \$200.
- (3) A person must not exhibit in a public place a film classified R 18+ if a minor is present during any part of the exhibition.
- Penalty: \$5 000.
- (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.

[Section 71 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 16.]

72. Attendance of minor at MA 15+ film

- (1) A person must not exhibit in a public place a film classified MA 15+ 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: \$1 000.

- (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); or
 - (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.

[Section 72 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 17.]

73. Unclassified, RC and X 18+ films, sale of

A person must not sell an unclassified film or a film classified RC or X 18+.

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

[Section 73 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 18.]

74. Classified films, sale of

- (1) 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: \$10 000.

- (2) Subsection (1) is not contravened by reason only of the sale of a classified film —
- (a) under a title different from that under which it is classified if it is contained on one device that consists only of 2 or more classified films; or
 - (b) with a modification referred to in section 21(2) of the Commonwealth Act.

[Section 74 amended by No. 30 of 2003 s. 41(2); No. 21 of 2010 s. 20.]

75. Notice about classifications for films to be displayed at place of sale

- (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: \$1 000.

[(2) deleted]

[Section 75 amended by No. 30 of 2003 s. 40 and 41(2).]

76. Markings etc. on films for sale, offences as to

- (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: \$5 000.

- (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: \$5 000.

- (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: \$5 000.

- (4) If —

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

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

[Section 76 amended by No. 30 of 2003 s. 10 and 41(2).]

77. Unclassified, RC or X 18+ films not to be kept where classified films are sold

- (1) If a person keeps or possesses an unclassified film or a film classified RC or X 18+ on any premises where classified films are sold, the person and the occupier of the premises are each guilty of an offence.

Penalty: \$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 did not know, and could not reasonably have known, that the film was on the premises.

[Section 77 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 19.]

78. R 18+ films, containers etc., display of in public

A person must not display in a public place —

- (a) a film classified R 18+; or
- (b) the container, wrapping or casing for a film classified R 18+,

with the intention of selling the film except in an area of the public place set aside by that person, and conspicuously identified, as an area for the display of films, or containers, wrapping or casings for films, with that classification.

Penalty: \$500.

[Section 78 inserted by No. 30 of 2003 s. 11; No. 10 of 2006 s. 20.]

79. Sale or supply of certain films to minors

- (1) A person must not sell or supply to a minor a film classified R 18+, unless the person is a parent or guardian of the minor.

Penalty: \$5 000.

- (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 18+ or R 18+ 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 15+ unless the person is a parent or guardian of the minor.
Penalty: \$2 000.
- (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.
- (6) A person must not supply to a minor a film classified X 18+ or RC or an unclassified film which would, if classified, be classified X 18+ or RC.
Penalty: \$15 000 or imprisonment for 18 months.
[Section 79 amended by No. 30 of 2003 s. 12 and 41(2); No. 10 of 2006 s. 21.]

80. Leaving certain films in certain places

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 18+; or
- (b) a film classified X 18+,

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

Penalty: \$5 000.

[Section 80 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 22.]

81. Possessing or copying certain films

- (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: \$10 000.

- (2) A person must not possess or copy —
- (a) an unclassified film that would, if classified, be classified X 18+, R 18+ or MA 15+; or
 - (b) a film classified X 18+,
- with the intention of selling the film or the copy, or exhibiting the film or the copy in a public place.
- Penalty: \$10 000.
- (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.
- [Section 81 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 23.]*

Division 4 — Computer games

82. Selling or demonstrating computer games in public place

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

- (a) is classified; and
- (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: \$10 000.

[Section 82 amended by No. 30 of 2003 s. 41(2).]

83. Notice about classifications for computer games to be displayed at place of sale etc.

- (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: \$1 000.

[(2) deleted]

[Section 83 amended by No. 30 of 2003 s. 40 and 41(2).]

84. RC computer games, sale etc. of

- (1) A person must not sell or demonstrate —
- (a) an unclassified computer game that would, if classified, be classified RC; or
 - (b) a computer game classified RC.

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

- (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.

[Section 84 amended by No. 30 of 2003 s. 41(2).]

85. MA 15+ computer games, demonstration of

- (1) A person must not demonstrate a computer game classified MA 15+ in a public place.
- Penalty: \$5 000.
- (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: \$2 000.

- (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: \$2 000.

- (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.

[Section 85 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 24.]

85A. MA 15+ computer games, containers etc., display of in public

A person must not display in a public place —

- (a) a computer game classified MA 15+; or
- (b) the container, wrapping or casing for a computer game classified MA 15+,

with the intention of selling or supplying the computer game except in an area of the public place set aside by that person and conspicuously identified, as an area for the display of computer games, or containers, wrapping or casings for computer games, with that classification.

Penalty: \$500.

[Section 85A inserted by No. 10 of 2006 s. 37.]

86. Markings etc. on computer games, offences as to

- (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: \$5 000.

- (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: \$5 000.

- (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: \$5 000.

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

Penalty: \$5 000.

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

- (6) If —

- (a) a computer game is reclassified under section 39 of the Commonwealth Act; or
- (b) the Board revokes a classification or consumer advice for a computer game under section 22B(3) of that Act,

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

[Section 86 amended by No. 30 of 2003 s. 13 and 41(2).]

87. Unclassified or RC computer games not to be kept where classified computer games are sold etc.

- (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: \$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 did not know, and could not reasonably have known, that the computer game was on the premises.

[Section 87 amended by No. 30 of 2003 s. 41(2).]

88. Sale or supply of certain computer games to minors

- (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: \$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 charged or that person's employee or agent believed on reasonable grounds that the minor was 15 years of age or older.

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

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

[Section 88 amended by No. 30 of 2003 s. 14 and 41(2); No. 10 of 2006 s. 25.]

89. Possessing or copying certain computer games

- (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: \$10 000.

- (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: \$10 000.

- (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: \$5 000.

- (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.

[Section 89 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 26.]

Division 5 — Advertisements

90. Certain advertisements not to be published

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

Penalty: \$5 000.

- (2) In subsection (1) —

unapproved advertisement means an advertisement that —

- (a) has not been submitted for approval under section 29 of the Commonwealth Act and, if submitted, would be refused approval; or
- (b) has been refused approval under section 29 of the Commonwealth Act; or

- (c) was approved under section 29 of the Commonwealth Act but the approval was revoked under section 13(5) or 21A of that Act.
- (3) If an advertisement for a film, publication or computer game is approved under section 29 of the Commonwealth Act, a person must not publish the advertisement —
 - (a) in an altered form to the form in which it is approved; or
 - (b) if it is approved subject to conditions, except in accordance with those conditions.

Penalty: a fine of \$5 000.

[Section 90 amended by No. 30 of 2003 s. 15 and 41(2); No. 21 of 2010 s. 29.]

91. Certain films etc. not to be advertised

- (1) A person must not publish an advertisement for —
 - [(a) deleted]*
 - (b) a film classified RC or X 18+; or
 - [(c) deleted]*
 - (d) a computer game classified RC; or
 - (e) a submittable publication; or
 - (f) a publication classified RC.

Penalty: \$5 000.

- (2A) A person must not publish an advertisement for an unclassified film or an unclassified computer game otherwise than in accordance with the advertising scheme.

Penalty: a fine of \$5 000.

- (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.

[Section 91 amended by No. 30 of 2003 s. 16 and 41(2); No. 10 of 2006 s. 27; No. 21 of 2010 s. 30.]

92. Which advertisements of films etc. can be screened with feature films

- (1) A person must not screen in a public place an advertisement for a classified film during a programme for the exhibition of another classified 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

Item	Column 1 Feature film	Column 2 Advertised film
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA 15+	MA 15+, M, PG or G
5	R 18+	R 18+, MA 15+, M, PG or G

Penalty: \$2 000.

- (2) A person must not exhibit in a public place an advertisement for a classified computer game during a programme for the exhibition of a classified film unless the film 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

Item	Column 1 Film	Column 2 Advertised computer game
1	G	G
2	PG	PG or G
3	M	M, PG or G

Item	Column 1 Film	Column 2 Advertised computer game
4	MA 15+	MA 15+, M, PG or G
5	R 18+	MA 15+, M, PG or G

Penalty: \$2 000.

- (3) A person must not exhibit in a public place an advertisement for an unclassified film or an unclassified computer game during a programme for the exhibition of a classified film unless the exhibition of that advertisement with the classified film complies with the advertising scheme.

Penalty: \$5 000.

[Section 92 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 28; No. 21 of 2010 s. 31.]

93. Advertisements for R 18+ or MA 15+ films, screening of

- (1) An occupier of a public place must not screen in the public place an advertisement for a film classified R 18+ or MA 15+. Penalty: \$2 000.
- (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 15+, the advertisement was screened during a programme for the exhibition of a film classified R 18+ or MA 15+; or
 - (b) if the advertised film is classified R 18+, the advertisement was screened during a programme for the exhibition of a film classified R 18+.

[Section 93 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 29.]

94. Classified films not to be sold with certain advertisements

- (1) A person must not sell a classified film (the *feature film*) that is accompanied by an advertisement for another classified 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

Item	Column 1 Feature film	Column 2 Advertised film
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA 15+	MA 15+, M, PG or G
5	R 18+	R 18+, MA 15+, M, PG or G

Penalty: \$2 000.

- (2) A person must not sell a classified film that is accompanied by an advertisement for a classified computer game unless the film 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

Item	Column 1 Film	Column 2 Advertised computer game
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA 15+	MA 15+, M, PG or G
5	R 18+	MA 15+, M, PG or G

Penalty: \$2 000.

- (3) A person must not sell a classified film that is accompanied by an advertisement for an unclassified film or an unclassified computer game unless the sale of the classified film with that advertisement complies with the advertising scheme.

Penalty: \$5 000.

[Section 94 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 30; No. 21 of 2010 s. 32.]

95. Classified computer games not to be sold with certain advertisements

- (1) A person must not sell a classified computer game (the **main game**) that is accompanied by an advertisement for another classified 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

Item	Column 1 Main game	Column 2 Advertised computer game
1	G	G
2	PG	G
3	M	M, PG or G
4	MA 15+	MA 15+, M, PG or G

Penalty: \$2 000.

- (2) A person must not sell a classified computer game that is accompanied by an advertisement for a classified film unless the computer game 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

Item	Column 1 Computer game	Column 2 Advertised film
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA 15+	MA 15+, M, PG or G

Penalty: \$2 000.

- (3) A person must not sell a classified computer game that is accompanied by an advertisement for an unclassified computer film or an unclassified computer game unless the sale of the classified computer game with that advertisement complies with the advertising scheme.

Penalty: \$5 000.

[Section 95 amended by No. 30 of 2003 s. 41(2); No. 10 of 2006 s. 31; No. 21 of 2010 s. 33.]

96. Illegal advertisements for classified articles not to be published

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

Penalty: \$2 000.

- (2) In subsection (1) —

illegal advertisement means an advertisement that does not —

- (a) contain the determined markings relevant to the classification of the publication or film or computer game and relevant consumer advice, if any; and
- (b) display the determined markings and consumer advice —
 - (i) in the manner determined under section 8 of the Commonwealth Act; and

- (ii) so as to be clearly visible, having regard to the size and nature of the advertisement.

(3) If —

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

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

[Section 96 amended by No. 30 of 2003 s. 17 and 41(2); No. 21 of 2010 s. 21.]

97. Misleading or deceptive advertisements

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

Penalty: \$2 000.

- (2) A person must not publish an advertisement for a classified publication or a classified film or a classified computer game with a marking that indicates or suggests that the publication, film or computer game is unclassified or has a different classification.

Penalty: \$2 000.

(3) If —

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

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

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

[Section 97 amended by No. 30 of 2003 s. 18 and 41(2).]

97A. Advertising that Category 1 or 2 restricted publications are for sale etc.

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

- (4) In subsection (1) —

approved form means a notice approved by the Minister.

[Section 97A inserted by No. 30 of 2003 s. 19.]

98. Classification symbols etc. to be published with advertisements

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

- (a) a film; or
- (b) a computer game; or
- (c) a publication classified Category 1 restricted or Category 2 restricted,

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

Penalty: \$2 000.

[Section 98 amended by No. 30 of 2003 s. 20 and 41(2).]

Division 6 — Computer services

99. Terms used

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; or
- (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 publication classified RC; or

- [(b) deleted]
- (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.

[Section 99 amended by No. 30 of 2003 s. 21; No. 21 of 2010 s. 10.]

100. Codes of practice, approval of etc.

- (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*.

101. Objectionable material, offences as to

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

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

- (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.

[Section 101 amended by No. 30 of 2003 s. 41(2).]

102. Restricted material, offences as to

- (1) A person must not use a computer service to transmit restricted material to a minor.
Penalty: \$5 000.
- (2) A person must not use a computer service to make restricted material available to a minor.
Penalty: \$5 000.
- (3) It is a defence to a charge of an offence against subsection (1) or (2) to prove that —
 - (a) the accused complied with a code of practice; or
 - (b) the accused took all reasonable steps in the circumstances to avoid a contravention of the subsection; or
 - (c) the accused believed on reasonable grounds that —
 - (i) the person to whom the accused transmitted the restricted material was not a minor; or
 - (ii) the restricted material would not be made available to a minor.

[Section 102 amended by No. 30 of 2003 s. 41(2); No. 84 of 2004 s. 82.]

Part 7A — Call-in provisions

[Heading inserted by No. 30 of 2003 s. 22.]

102A. Calling in submittable publications etc. for classification

(1) If —

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

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

- (2) The Director must cause notice of his or her decision under subsection (1) to be published in the Commonwealth Gazette.
- (3) The Minister must cause notice of his or her decision under subsection (1) to be published in the *Government Gazette*.
- (4) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.

Penalty: \$10 000.

- (5) It is a defence to a prosecution for an offence against subsection (4) to prove that the accused did not intend —
 - (a) to publish the publication in Western Australia; or
 - (b) to cause, authorise, permit or license the publication to be published in Western Australia.

[Section 102A inserted by No. 30 of 2003 s. 22; amended by No. 84 of 2004 s. 82.]

102B. Calling in films for classification

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

[Section 102B inserted by No. 30 of 2003 s. 22; amended by No. 84 of 2004 s. 82.]

102C. Calling in computer games for classification

- (1) If —
- (a) the Director or the Minister has reasonable grounds to believe that a computer game is likely to contain contentious material; and

s. 102C

- (b) the computer game is being published in Western Australia, or the Director or the Minister has reasonable grounds to believe that it will be published in Western Australia,

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

- (2) If —

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

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

- (3) The Director must cause notice of his or her decision under subsection (1) or (2) to be published in the *Commonwealth Gazette*.
- (4) The Minister must cause notice of his or her decision under subsection (1) or (2) to be published in the *Government Gazette*.
- (5) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.

Penalty: \$10 000.

- (6) It is a defence to a prosecution for an offence against subsection (5) to prove that the accused did not intend —
 - (a) to publish the computer game in Western Australia; or

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

[Section 102C inserted by No. 30 of 2003 s. 22; amended by No. 84 of 2004 s. 82.]

102D. Calling in advertisements for submittable publications etc.

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

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

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

Penalty: \$10 000.

s. 102E

- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the accused did not intend —
- (a) to publish the publication, film or computer game in Western Australia; or
 - (b) to cause, authorise, permit or license the publication, film or computer game to be published in Western Australia.

[Section 102D inserted by No. 30 of 2003 s. 22; amended by No. 84 of 2004 s. 82; No. 21 of 2010 s. 34.]

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

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

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

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

Penalty: \$10 000.

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

[Section 102E inserted by No. 30 of 2003 s. 22; amended by No. 84 of 2004 s. 82.]

102F. Calling in publication, film or computer game for review of classification

(1) If —

- (a) an application is made for a review of a classification decision under the Commonwealth Act by a person who is not the original applicant for classification of the publication, film or computer game concerned; and
- (b) the Board or the Review Board does not have a copy of the publication, film or computer game and a copy is not available to it; and
- (c) the original applicant or the publisher of the publication, film or computer game resides in Western Australia or has an office in Western Australia,

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

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

Penalty: \$10 000.

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

[Section 102F inserted by No. 30 of 2003 s. 22; amended by No. 84 of 2004 s. 82; No. 21 of 2010 s. 22.]

Part 8 — Exemptions and exceptions

103. Supply etc. for classification etc. purposes not offence under Part 7

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.

104. Offences as to possession, defences to

- (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; or
 - (b) for the purposes of any proceedings under this Act or any other enactment in relation to the article; or
 - (c) for the purpose of giving legal advice in relation to the article; or
 - (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 Director, 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).

[Section 104 amended by No. 30 of 2003 s. 23.]

105. Articles and computer services, exemptions for

- (1) The Director 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 publication, 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.

[Section 105 amended by No. 30 of 2003 s. 24.]

106. Approved organizations, exemptions for as to specific films etc.

- (1) The Minister or the Director 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 by an organization approved under section 108 for an exemption under subsection (1) must —
 - (a) be in writing; and
 - (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.
- (3A) The Minister or the Director may, on application under subsection (3B), direct in writing that Part 7 does not apply, or any provisions of that Part do not apply, to an organization

s. 107

approved under section 108 in relation to all or any of its activities or functions that relate to films or computer games.

- (3B) An application by an organization approved under section 108 for an exemption under subsection (3A) must —
- (a) be in writing; and
 - (b) specify the extent of the exemption sought; and
 - (c) be accompanied by the prescribed fee.
- (3) The Minister or Director, 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.

[Section 106 amended by No. 30 of 2003 s. 25; No. 21 of 2010 s. 23.]

107. Ministerial directions or guidelines

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

[Section 107 amended by No. 30 of 2003 s. 26.]

108. Organizations, approval of

- (1) The Minister, by notice published in the *Government Gazette*, or the Director, by notice published in the *Commonwealth Gazette*, may, on application, approve an organization for the purposes of section 106(1) or (3A).
- (2) In considering whether to approve an organization for the purposes of section 106(1), the Minister or Director must have regard to —
- (a) the purpose for which the organization was formed; and

- (b) the extent to which the organization carries on activities of a medical, scientific, educational, cultural or artistic nature; and
 - (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.
- (3A) In considering whether to approve an organization for the purposes of section 106(3A), the Minister or Director must have regard to the following —
 - (a) the purpose for which the organization was formed;
 - (b) the extent to which the organization carries on activities of an educational, cultural or artistic nature;
 - (c) the reputation of the organization in relation to —
 - (i) the screening of films by the organization; or
 - (ii) the demonstration of computer games by the organization,as the case may be;
 - (d) the conditions as to admission of persons to —
 - (i) the screening of films by the organization; or
 - (ii) the demonstration of computer games by the organization,as the case may be.
- (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) or (3A), that person considers that it is no longer appropriate that the organization be approved.

s. 109

- (5) An approval given by the Director may be revoked by the Minister if the Minister considers that it is not appropriate that the organization be approved.
- (6) The Minister or Director, 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.

[Section 108 amended by No. 30 of 2003 s. 27; No. 21 of 2010 s. 24.]

109. Appeals against certain decisions of Director

- (1) If the Director makes a decision —
 - (a) to refuse an application for approval; or
 - (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; or
 - (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 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.
- [Section 109 amended by No. 30 of 2003 s. 28.]*

110. Publication of certain films etc. to prescribed person etc.

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 18+, R 18+ or MA 15+; or
- (b) a computer game that is not classified or is classified RC or MA 15+; or
- (c) a submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC.

[Section 110 amended by No. 30 of 2003 s. 29; No. 10 of 2006 s. 32.]

Part 9 — Enforcement

Division 1 — General matters

[Heading inserted by No. 30 of 2003 s. 30.]

111. Interpretation

- (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; or
 - (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.

112. Entry, inspection and seizure without warrant

- (1) The Minister may appoint a person as an authorised person for the purposes of subsection (2).
- (2) A member of the police force, or an authorised 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.

113. Obstruction

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

Penalty: \$1 000.

114. False or misleading statements

A person must not —

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

Penalty: \$1 000.

[Section 114 amended by No. 30 of 2003 s. 39.]

115. Liability of bodies corporate and their directors etc.

- (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.

116. Prosecutions, time for commencing

- (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 or the accused, by notice under section 141A, agrees that the publication, film or computer game if classified would have been the classification agreed; and
 - (b) may be commenced not later than 12 months after the date on which —
 - (i) the publication, film or computer game was classified; or
 - (ii) the accused returned the notice under section 141A,whichever is relevant.

[(2) deleted]

[Section 116 amended by No. 30 of 2003 s. 31; No. 84 of 2004 s. 82; No. 21 of 2010 s. 11.]

117. Forfeiture

- (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.
- (2a) If —
 - (a) a film classified RC or X 18+; or
 - (b) a publication or computer game classified RC,has been lawfully seized but at the expiration of 12 months after the seizure no person has been charged with an offence in relation to the seized thing, the thing is forfeited to the Crown.
- (3) If a thing, other than a thing referred to in subsection (2a)(a) or (b) or section 117A(1), has been lawfully seized but no person has been charged with an offence in respect of the thing an authorised 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 the Magistrates Court 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; or
 - (c) if the court is satisfied that it is appropriate for a member of the police force to be given more time to investigate or analyse evidence relating to the seized thing, the court may order that the thing be held in the custody of the member of the police force for such further period as the court thinks fit.
- (7) Subject to subsection (8) a thing that is forfeited to the Crown under this Act may be destroyed or otherwise dealt with as instructed by the Registrar.
- (8) Where a thing is ordered to be forfeited to the Crown under this section, the Registrar 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.
- (9) In this section —
- lawfully seized*** means lawfully seized in relation to an alleged offence under this Act.

[Section 117 amended by No. 30 of 2003 s. 32 and 39; No. 59 of 2004 s. 141; No. 10 of 2006 s. 7 and 33; No. 21 of 2010 s. 12.]

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

- (1) Subject to the making of an order under subsection (7), if —
- (a) proceedings are commenced for an offence under section 61, 62, 63(1), 73, 81(1) or (2), 84(1) or 89(1) in relation to 10 or more different products (the ***seized products***); and
 - (b) the seized products were seized on the same day from the same premises,
- then —
- (c) any other copies of the seized products seized on that day from those premises (the ***seized copies***) may be retained by the Crown until the proceedings referred to in paragraph (a) are finished; and
 - (d) if 10 or more of the seized products are forfeited to the Crown as a result of those proceedings, all of the seized copies of those products not the subject of those proceedings are, at the expiry of the prescribed period, also forfeited to the Crown.
- (2) If the owner of any seized copies of products liable to forfeiture under subsection (1)(d) makes a written request to the Commissioner of Police within 2 months after 10 or more seized products are forfeited to the Crown as a result of proceedings referred to in subsection (1)(a), that person must be allowed to view the seized copies at a time and place fixed by the Commissioner of Police.
- (3) The owner of any seized copy liable to forfeiture under subsection (1)(d) may, within the prescribed period, apply to a justice for an order for return of the seized copy.
- (4) An applicant for an order under this section must give notice of the application to the Commissioner of Police.

- (5) The Commissioner of Police is a party to any proceedings for an order under this section.
- (6) If an application is made for an order under this section, the seized copies may be retained by the Crown until the application is determined but the operation of subsection (1)(d) is suspended until the application is determined.
- (7) The justice may, on an application under this section, order that a seized copy to which the application relates be returned to its owner if satisfied, on the balance of probabilities, that —
 - (a) in the case of a publication, the publication is not a submittable publication or is classified with a classification other than RC; and
 - (b) in the case of a film, the film is classified with a classification other than X 18+ or RC; and
 - (c) in the case of a computer game, the computer game is classified with a classification other than RC; and
 - (d) an offence under section 61, 62, 63(1), 73, 81(1) or (2), 84(1) or 89(1) was not committed in relation to the publication, film or computer game.
- (8) In this section —
 - prescribed period*** means —
 - (a) 2 months after the date on which 10 or more of the products seized on the same day from the same premises are forfeited to the Crown as a result of proceedings referred to in subsection (1)(a); or
 - (b) if the owner requests permission to view the seized products, 2 months from the time fixed by the Commissioner of Police for the viewing;

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

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

[Section 117A inserted by No. 30 of 2003 s. 33; amended by No. 10 of 2006 s. 34.]

117B. Classification of seized items at request of accused

- (1) If —
- (a) a publication, film or computer game has been seized under this Act and is in the possession or control of the prosecution; and
 - (b) the owner of the publication, film or computer game, or a person charged with an offence relating to the publication, film or computer game, wishes to submit an application for classification of the publication, film or computer game,

the prosecution must, at the request of the person, forward the person's application with the publication, film or computer game, or a copy of the publication, film or computer game to the Board on behalf of the person.

- (2) Despite subsection (1), the prosecution may refuse to forward the application until all fees payable to the Board for the classification and the postage costs associated with the application are given to the prosecution.

[Section 117B inserted by No. 30 of 2003 s. 33.]

Division 2 — Infringement notices

[Heading inserted by No. 30 of 2003 s. 34.]

117C. Term used: designated person

In this Division —

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

[Section 117C inserted by No. 30 of 2003 s. 34.]

117D. Giving of infringement notice

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

[Section 117D inserted by No. 30 of 2003 s. 34.]

117E. Content of infringement notice

- (1) An infringement notice is to be in the prescribed form and is to —
 - (a) contain a description of the alleged offence; and
 - (b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to a designated person within a period of 28 days after the giving of the notice; and
 - (c) inform the alleged offender as to who are designated persons for the purposes of receiving payment of modified penalties.
- (2) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be

the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

- (3) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

[Section 117E inserted by No. 30 of 2003 s. 34; amended by No. 84 of 2004 s. 80.]

117F. Extension of time to pay modified penalty

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

[Section 117F inserted by No. 30 of 2003 s. 34; amended by No. 10 of 2006 s. 9.]

117G. Withdrawal of infringement notice

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

[Section 117G inserted by No. 30 of 2003 s. 34; amended by No. 10 of 2006 s. 10.]

117H. Benefit of paying modified penalty

- (1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.

- (2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

[Section 117H inserted by No. 30 of 2003 s. 34.]

117I. Application of penalties collected

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

[Section 117I inserted by No. 30 of 2003 s. 34.]

117J. Designated persons, appointment of

- (1) The Minister may, in writing, appoint persons or classes of persons to be designated persons for the purposes of section 117D, 117E, 117F or 117G or for the purposes of 2 or more of those sections.
- (2) Without limiting subsection (1), the Minister may appoint, under that subsection, persons or classes of persons appointed under the *Public Service Act 1999* of the Commonwealth, or an Act enacted in substitution for that Act, to be designated persons for the purposes of section 117D.
- (3) A person who is authorised to give infringement notices under section 117D is not eligible to be a designated person for the purposes of any of the other sections.
- (4) A member of the police force who has been authorised by the Commissioner of Police to extend time on, or withdraw, an infringement notice under section 117F or 117G cannot exercise

either power in relation to an infringement notice issued by that member.

[Section 117J inserted by No. 30 of 2003 s. 34; amended by No. 10 of 2006 s. 11.]

[Part 10 (s. 118-128) deleted by No. 30 of 2003 s. 35.]

Part 11 — Registration of persons and premises

128A. Registrar

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

[Section 128A inserted by No. 30 of 2003 s. 36; amended by No. 10 of 2006 s. 6.]

129. Registering publishers of Category 1 or 2 restricted publications

- (1) Any person who is carrying on or intends to carry on the business of publishing publications may apply to the Registrar to be registered for the purpose of selling publications classified Category 1 restricted or Category 2 restricted, or both.
- (2) Subject to subsection (3), the Registrar must grant an application for registration made under this Part.
- (3) The Registrar 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; or
 - (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 Registrar cancelled or refused to renew that registration; or
 - (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.

[Section 129 amended by No. 30 of 2003 s. 37 and 39.]

130. Registering premises where Category 1 or 2 restricted publications are published

- (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 Registrar grants an application for registration under section 129, the Registrar 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 Registrar in a form approved by the Minister for premises at which the registered person proposes to carry on the business of publishing publications to be registered and the Registrar is to register those premises in the name of the registered person.

[Section 130 amended by No. 30 of 2003 s. 39; No. 21 of 2010 s. 25.]

131. Applications for registration or renewal, form of

- (1) An application for registration or renewal of registration must be —
 - (a) in writing; and
 - (b) in a form approved by the Minister in writing; and
 - (c) signed by or on behalf of the applicant; and
 - (d) accompanied by the prescribed fee; and
 - (e) accompanied by such information as the Registrar requires.

s. 132

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

[Section 131 amended by No. 30 of 2003 s. 39.]

132. Notice of decision on registration application

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

[Section 132 amended by No. 30 of 2003 s. 39.]

133. Certificates of registration

- (1) On registering a person under this Part the Registrar 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.

[Section 133 amended by No. 30 of 2003 s. 39.]

134. Duration of registration

- (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 Registrar 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 Registrar proposes to cancel or refuse to renew registration of a person the Registrar 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 Registrar concerning the matter, and the Registrar is not to determine the matter without considering any representations received within that period.
- (5) If the Registrar cancels or refuses to renew the registration of a person the Registrar 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.

[Section 134 amended by No. 30 of 2003 s. 39.]

135. Register

- (1) The Registrar 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; and
 - (b) the business name, if any, under which the registered person carries on or intends to carry on business; and

s. 136

- (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 Registrar thinks fit.
- (3) The Registrar 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 Registrar.
- (5) The Registrar 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.

[Section 135 amended by No. 30 of 2003 s. 39.]

136. Change of particulars

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 Registrar.

Penalty: \$200.

[Section 136 amended by No. 30 of 2003 s. 39.]

[137. Deleted by No. 30 of 2003 s. 40.]

Part 12 — General

[138, 139. Deleted by No. 30 of 2003 s. 40.]

140. Power to demand name, age and address

(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.

s. 141

- (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; or
 - (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.

141. Evidentiary provisions to facilitate proof

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

- (a) a film, publication or computer game is, or was, classified as specified in the certificate and, if the case requires, the determined markings for that type of classification are, or were, as specified in the certificate; or
- (b) a classified film or a classified computer game specified in the certificate is, or was, modified in a manner specified in the certificate; or
- (c) a publication, film or computer game is not, or was not, classified, or is not, or was not, classified at a classification specified in the certificate; or

- (d) an advertisement described in the certificate is, or was, approved or has, or had, been refused approval or has not, or had not, been approved,

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

[Section 141 inserted by No. 30 of 2003 s. 38; amended by No. 10 of 2006 s. 8; No. 21 of 2010 s. 26.]

141A. Proof of classification by agreement

- (1) Subject to subsection (2), if a person is charged with an offence against this Act, the prosecution may, prior to the trial, give the accused a notice —
 - (a) setting out —
 - (i) the title or apparent title (if any) of the publication, film or computer game; and
 - (ii) particulars of the offence in relation to which the notice is served;
 - and
 - (b) stating that the accused is entitled to view the publication, film or computer game; and
 - (c) inviting the accused to indicate, by completing and signing a statement to that effect set out in the notice and returning the notice to an address set out in the notice, that the accused agrees that, on a specified date, the publication, film or computer game —
 - (i) was classified at the specified classification; or
 - (ii) was unclassified but would, if classified, have been of the specified classification; or
 - (iii) was unclassified,as the case may require; and
 - (d) stating that if the accused does not indicate his or her agreement in accordance with paragraph (c) within the

s. 141A

period specified in the notice (being not less than the prescribed period), the accused will, if found guilty of the offence specified in the notice, be liable to pay an amount equal to —

- (i) if the offence in relation to which the notice is served involves an allegation that on a specified date, a publication, film or computer game was unclassified but would, if classified, have been of a particular classification — the fee for classification of the publication, film or computer game; or
 - (ii) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a publication, film or computer game was classified at a particular classification or was unclassified — the fee for obtaining a certificate of a kind described in section 141 specifying the classification of the publication, film or computer game at that date or stating that the publication, film or computer game was unclassified at that date.
- (2) This section does not apply where the offence with which a person is charged involves an allegation that a publication, film or computer game was unclassified but would, if classified, be classified at a classification other than X 18+ or RC.
- (3) A person served with a notice under this section must, on making a written request to the prosecution within 14 days from the date of service of the notice, be allowed to view the publication, film or computer game the subject of the notice at a time and place fixed by the prosecution.
- (4) In proceedings for an offence against this Act, a notice under this section containing a statement, completed and signed by the accused, that the accused agrees that, on a specified date, the publication, film or computer game —
- (a) was classified at the specified classification; or

- (b) was unclassified but would, if classified, have been of a specified classification; or
- (c) was unclassified,

is evidence of, and in the absence of evidence to the contrary is proof, of the matter agreed.

(5) If —

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

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

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

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

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

(7) If —

- (a) a notice is served under this section in relation to an offence involving an allegation that a publication, film or computer game was unclassified but would, if classified, have been of a specified classification; and

s. 142

- (b) the person served with the notice does not return the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice; and
- (c) the publication, film or computer game is subsequently classified at a higher classification than the classification specified in the notice,

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

- (8) In this section —

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

[Section 141A inserted by No. 30 of 2003 s. 38; amended by No. 84 of 2004 s. 82; No. 10 of 2006 s. 35.]

142. Protection from personal liability

- (1) This section applies to —

- (a) the Minister; and
- [(b), (c) deleted]*
- (d) the Registrar; and
- [(e), (f) deleted]*
- (g) an authorised person; and
- (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 Department².

- (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.

[Section 142 amended by No. 30 of 2003 s. 39 and 40.]

143. Regulations

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

144. Term used: commencement

In this Part —

commencement means commencement of this Part.

145. Pending applications

If, on commencement, an application for —

- (a) classification of a publication under the *Indecent Publications and Articles Act 1902*³; or
- (b) classification of a film under the *Censorship of Films Act 1947*³; or
- (c) classification of a video tape under the *Video Tapes Classification and Control Act 1987*³,

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

146. Savings provisions for publications

- (1) In this section —

former Act means the *Indecent Publications and Articles Act 1902*³.

- (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.

147. Transitional and savings provisions for films

- (1) In this section —

former Act means the *Censorship of Films Act 1947*³.

- (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.

148. Transitional and savings provisions for videos

- (1) In this section —
former Act means the *Video Tapes Classification and Control Act 1987*³.
- (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.

s. 149

- (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.

149. Transitional provisions for computer games

- (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

Item	Column 1 Ordinance	Column 2 This Act
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.

[150. Omitted under the Reprints Act 1984 s. 7(4)(g).]

151. Savings provisions for registration

- (1) A person who, immediately before commencement, is registered under section 11A of the *Indecent Publications and Articles Act 1902*³ 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*³ 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.

152A. Advertisements for unclassified films

- (1) A person does not commit an offence under section 91(2A) by publishing an advertisement for an unclassified film if the advertisement is published in accordance with a transitional Commonwealth regulation.

s. 153

- (2) In subsection (1) —

transitional Commonwealth regulation means a regulation made under the *Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008* (Commonwealth) Schedule 1 item 13.

[Section 152A inserted by No. 21 of 2010 s. 35.]

[152. Omitted under the Reprints Act 1984 s. 7(4)(e).]

153. Repeals

- (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 deleted by No. 30 of 2003 s. 40.]

=====

Notes

- ¹ This is a compilation of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* and includes the amendments made by the other written laws referred to in the following table ^{1a, 4}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Censorship Act 1996</i> ⁵	40 of 1996	10 Oct 1996	s. 1 and 2: 10 Oct 1996; Act other than s. 1 and 2: 5 Nov 1996 (see s. 2 and <i>Gazette</i> 5 Nov 1996 p. 5845)
<i>Censorship Amendment Act 2003</i> ⁶	30 of 2003	26 May 2003	s. 1 and 2: 26 May 2003; Act other than s. 1 and 2: 1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
Reprint 1: The <i>Censorship Act 1996</i> as at 28 Nov 2003 (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Censorship Amendment Act 2006</i> ^{7, 8}	10 of 2006	8 May 2006	Pt. 4 and Sch. 2: 26 May 2005 (see s. 2(3)); Act other than Pt. 4 and Sch. 2: 10 Jun 2006 (see s. 2 and <i>Gazette</i> 9 Jun 2006 p. 2029)
Reprint 2: The <i>Classification (Publications, Films and Computer Games) Enforcement Act 1996</i> as at 21 Jul 2006 (includes amendments listed above)			
<i>Child Pornography and Exploitation Material and Classification Legislation Amendment Act 2010</i> Pt. 2 Div. 2, Pt. 3 and 4	21 of 2010	7 Jul 2010	28 Aug 2010 (see s. 2(b) and <i>Gazette</i> 27 Aug 2010 p. 4105)
Reprint 3: The <i>Classification (Publications, Films and Computer Games) Enforcement Act 1996</i> as at 13 May 2011 (includes amendments listed above)			

- ^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2012</i> s. 3-15 ⁹	53 of 2012	29 Nov 2012	1 Jan 2013 (see s. 2(b)(i))

- ² Under the *Alteration of Statutory Designations Order (No. 2) 1997* a reference in any law to the Police Department shall be read and construed as a reference to the department in the Public Service designated as the Police Service.
- ³ Repealed by s. 153 of this Act.
- ⁴ The amendment in the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 16 is not included because the section it sought to amend had been repealed by the *Censorship Amendment Act 2003* s. 35 before the amendment purported to come into operation.
- ⁵ Now known as the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*; short title changed (see note under s. 1).
- ⁶ The *Censorship Amendment Act 2003* s. 45-49 read as follows:

45. Transitional and savings provisions: publications

- (1) A publication that —
- (a) has been classified Unrestricted under the *Censorship Act 1996*; and
 - (b) has not been classified under the Commonwealth Act,
- is taken to have been classified Unrestricted under the Commonwealth Act until it is classified under that Act.
- (2) A publication that —
- (a) has been classified restricted under the *Censorship Act 1996*; and
 - (b) has not been classified under the Commonwealth Act,
- is taken to have been classified Category 2 restricted under the Commonwealth Act until it is classified under that Act.

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

46. Transitional and savings provisions: films and advertisements

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

47. Transitional and savings provisions: computer games

- (1) A computer game that —
 - (a) has been classified G, G(8+), M(15+), MA(15+) or RC under the *Censorship Act 1996*; and
 - (b) has not been classified under the Commonwealth Act, is taken to have been so classified under the Commonwealth Act.
- (2) An advertisement for a computer game that —
 - (a) has been approved or refused approval under the *Censorship Act 1996*; and
 - (b) has not been approved or refused approval under the Commonwealth Act, is taken to have been so approved or refused approval under the Commonwealth Act.
- (3) Section 86(4) and (5) of the *Censorship Act 1996*, as inserted by section 13 of this Act, apply to a computer game whether published before or after the commencement of section 13 of this Act.

48. Transitional: calling in, review and reclassification

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

49. Transitional: offences

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

⁷ The *Censorship Amendment Act 2006* s. 36, which gives effect to Sch. 2, reads as follows:

36. Transitional

Schedule 2 sets out transitional provisions.

Schedule 2 reads as follows:

Schedule 2 — Transitional

[s. 36]

1. Transitional provisions for films and advertisements with older ratings

If, just before Part 4 commenced, a film or advertisement had a classification of a type mentioned in column 2 of the following Table, in relation to an item, then, for the purposes of applying the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* after that Part commences, the film or advertisement is taken to have, and to have had at all times before that Part commenced when it had that classification, the classification of the type mentioned in column 3 of the Table in relation to the item.

Table		
Film and advertisement classifications		
Column 1	Column 2	Column 3
Item	Former type of classification	New type of classification
1	M (15+)	M
2	MA (15+)	MA 15+
3	R	R 18+
4	X	X 18+

2. Transitional provisions for computer games and advertisements with older ratings

If, just before Part 4 commenced, a computer game or advertisement had a classification of a type mentioned in column 2 of the following Table, in relation to an item, then, for the purposes of applying the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* after that Part commences, the computer game or advertisement is taken to have, and to have had at all times before that Part commenced when it had that classification, the classification of the type mentioned in column 3 of the Table in relation to the item.

Table		
Computer game and advertisement classifications		
Column 1	Column 2	Column 3

Computer game and advertisement classifications		
Item	Former type of classification	New type of classification
1	G (8+)	PG
2	M (15+)	M
3	MA (15+)	MA 15+

⁸ The *Censorship Amendment Act 2006* s. 4(3) and (4) read as follows:

- (3) A reference in any Act or regulation to the “*Censorship Act 1996*” shall, unless the context otherwise requires, be read and construed as a reference to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*.
- (4) The reference in the *Community Protection (Offender Reporting) Act 2004* Schedule 2 or the *Working with Children (Criminal Record Checking) Act 2004* Schedule 2 to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* is taken to include, and always to have included, a reference to the *Censorship Act 1996*.

⁹ On the date as at which this compilation was prepared, the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2012* s. 3-15 had not come into operation. They read as follows:

3. Act amended

This Act amends the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*.

4. Section 3 amended

In section 3 in the definition of *contentious material* delete “MA 15+ or” and insert:

MA 15+, R 18+ or

5. Section 57 amended

In section 57(c) delete “M or MA 15+; or” and insert:

M, MA 15+ or R 18+; or

6. Section 84 amended

In section 84(2) delete “RC,” and insert:

RC or R 18+,

Note: The heading to amended section 84 is to read:
RC and R 18+ computer games, sale etc. of

7. Section 85 amended

- (1) In section 85(1) after “classified” insert:

R 18+ or

- (2) In section 85(2):

- (a) in paragraph (a) after “be classified” insert:

R 18+ or

- (b) in paragraph (b) after “classified” insert:

R 18+ or

- (3) After section 85(2) insert:

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

- (a) an unclassified computer game that would, if classified, be classified R 18+; or
(b) a computer game classified R 18+,

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

Penalty: a fine of \$2 000.

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

Note: The heading to amended section 85 is to read:
R 18+ and MA 15+ computer games, demonstration of

8. Section 85A amended

In section 85A(a) and (b) after “classified” insert:

R 18+ or

Note: The heading to amended section 85A is to read:
R 18+ and MA 15+ computer games, containers etc., display of in public

9. Section 88 amended

Before section 88(1) insert:

- (1A) A person must not sell or supply to a minor a computer game classified R 18+ unless the person is a parent or guardian of the minor.
Penalty: a fine of \$5 000.
- (1B) It is a defence to a charge of an offence against subsection (1A) 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 computer game 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.

10. Section 89 amended

- (1) In section 89(2) after "be classified" insert:

R 18+ or

- (2) In section 89(3) after "classified" insert:

R 18+ or

11. Section 92 amended

In section 92(2) in the Table item 5 delete "MA 15+," and insert:

R 18+, MA 15+,

12. Section 94 amended

In section 94(2) in the Table item 5 delete “MA 15+,” and insert:

R 18+, MA 15+,

13. Section 95 amended

(1) In section 95(1) in the Table after item 4 insert:

5 R 18+ R 18+, MA 15+, M, PG or G

(2) In section 95(2) in the Table after item 4 insert:

5 R 18+ R 18+, MA 15+, M, PG or G

(3) In section 95(3) delete “computer film” and insert:

film

14. Section 110 amended

In section 110(b) delete “RC or” and insert:

RC, R 18+ or

15. Section 153A inserted

Before section 153 insert:

**153A. Change of classification of computer games from MA 15+ to
R 18+**

If —

- (a) immediately before the coming into operation of this section, a computer game is classified MA 15+; and
- (b) within 12 months after the coming into operation of this section, the computer game becomes classified R 18+ under the Commonwealth Act; and

- (c) within 90 days after the change in classification, a person commits an offence in relation to the computer game under section 85, 85A, 86, 88, 89, 92, 94 or 95 (the ***relevant section***); and
- (d) the person would not have committed any offence under the relevant section if the computer game had still been classified MA 15+,

then the person is taken not to have committed an offence under the relevant section.

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
acceptable proof of age	3
adult	3
advertisement	3
advertising scheme	3
approved advertisement	3
approved form	3, 97A(4), 133(4)
article	3
authorised person	3
Board	3
business day	3
buy	3
classification certificate	3
classified	3
code of practice	99
commencement	144
Commonwealth Act	3
Commonwealth Gazette	3
computer game	3
computer service	99
consumer advice	3
contentious material	3
Convenor	3
demonstrate	3
Deputy Director	3
designated person	117C
determined markings	3
Director	3
exempt computer game	3
exempt film	3
exhibit	3
feature film	92(1), 94(1)
film	3
former Act	146(1), 147(1), 148(1)
illegal advertisement	96(2)
international flight	3
international voyage	3
lawfully seized	117(9)
main game	95(1)
minor	3
objectionable material	99
Ordinance	149(1)

Defined Terms

place	3
plain	64(5)
prescribed period.....	117A(8), 141A(8)
products.....	117A(8)
public place	3
publication	3
publish.....	3
registered person	3
registered premises.....	3
Registrar	3
restricted material.....	99
Review Board	3
seized copies	117A(1)(c)
seized products.....	117A(1)(a)
sell.....	3
sound recording.....	3
submittable publication	3
transitional Commonwealth regulation	152A(2)
unapproved advertisement	90(2)