

Western Australia

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

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

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Western Australia

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## **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*<sup>1</sup>.

[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 proclamation<sup>1</sup>.

### **3. Interpretation**

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;

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

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

***article*** includes —

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

**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;

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

**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;

**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;

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

(d) a public place covered by water; and

(e) a school;

**publish** includes sell, exhibit, display, 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;

(b) let on hire;

(c) expose for sale or hire;

(d) distribute for sale or letting on hire;

(e) offer or agree to do an Act mentioned in paragraphs (a) to (d); and

(f) cause or permit to be done an Act mentioned in paragraphs (a) to (e);

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

**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.]*

#### **4. Exhibition of film**

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

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

**5. Sound recordings**

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.]*

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

## **Part 7 — Offences**

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

#### **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;
- (b) a film that is classified G, PG, M, MA 15+, R 18+ or X 18+;
- (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. Merit or *bona fide* medical article**

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**

- (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.

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**Part 7** Offences

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

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- (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. Child pornography**

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

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

- (2) A person who publishes —
- (a) anything likely to be understood as conveying that the person publishes or supplies child pornography; or
  - (b) an advertisement for child pornography,
- is guilty of a crime, and is liable to imprisonment for 5 years.
- (3) A person who displays, exhibits or demonstrates child pornography is guilty of a crime, and is liable to imprisonment for 5 years.
- (4) A person who possesses or copies child pornography is guilty of a crime, and is liable to imprisonment for 5 years.
- (5) In proceedings for an offence against subsection (1), evidence that a person had possession of, or made, 10 or more copies of an article that is child pornography is evidence that the person intended to sell the child pornography and, in the absence of evidence to the contrary, is proof of that fact.
- (6) For the purposes of subsection (2)(b), if a person publishes an advertisement for child pornography at the request of another person, that other person alone must be taken to have published it.
- (7) A person liable to imprisonment under this section may be sentenced to pay a fine of any amount in addition to or instead of being sentenced to imprisonment.

### **Division 2 — Publications**

*[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**

- (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**

- (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.

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**Division 2** Publications

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- (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 publications in certain places**

- (1) A person must not leave in a public place or display in such a manner as to be visible to persons in a public place —

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

Penalty: \$10 000.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that —

- (a) since the offence was alleged to have been committed, the publication has been classified Unrestricted;
- (b) the 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;
- (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**

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

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

Penalty: \$10 000.

*[Section 66 amended by No. 30 of 2003 s. 41(2).]*

#### **67. Display of notice about classification**

- (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: exhibition**

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**

- (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**

- (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+,

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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 — offence by exhibitor**

- (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) —

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- (a) a minor does not cease to be accompanied if his or her parent or guardian is temporarily absent from the exhibition of the film; and
  - (b) an offence is committed in respect of each unaccompanied minor present at the exhibition of the film.
- (3) It is a defence to a charge of an offence against subsection (1) for the person charged to prove that —
- (a) the person charged or that person's employee or agent took all reasonable steps to ensure that a minor was not present in contravention of subsection (1);
  - (b) the person charged or that person's employee or agent believed on reasonable grounds that the minor was 15 years of age or older; or
  - (c) the person charged or that person's employee or agent believed on reasonable grounds that the person accompanying the minor was the minor's parent or guardian.

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

**73. Sale of unclassified, RC and X 18+ films**

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. Sale of classified films**

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.

*[Section 74 amended by No. 30 of 2003 s. 41(2).]*

**75. Display of notice about classifications 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. Films to bear determined markings and consumer advice**

- (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. Keeping unclassified, RC or X 18+ films with other films**

- (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. Display of R 18+ film or containers**

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 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. Possession or copying of 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. Sale or demonstration of 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;
- (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. Display of notice about classification**

- (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**

- (1) A person must not sell or demonstrate —

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- (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. Demonstration of MA 15+ computer games**

- (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.

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

**85A. Display of MA 15+ computer games or containers**

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

- (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. Keeping unclassified or RC computer games with other computer games**

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

*[Section 90 amended by No. 30 of 2003 s. 15 and 41(2).]*

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

- (1) A person must not publish an advertisement for —
- (a) an unclassified film, other than a film in relation to which a certificate of exemption has been granted under section 33 of the Commonwealth Act;
  - (b) a film classified RC or X 18+;
  - (c) an unclassified computer game;
  - (d) a computer game classified RC;
  - (e) a submittable publication; or
  - (f) a publication classified RC.

Penalty: \$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.]*

**92. Screening of advertisements with feature films**

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

**Table**

<b>Item</b>	<b>Column 1 Feature film</b>	<b>Column 2 Advertised film</b>
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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

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Penalty: \$2 000.

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

**93. Liability of occupier for certain advertisements**

- (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. Sale of feature films with advertisements**

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

**Table**

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<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
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	<b>Feature film</b>	<b>Advertised film</b>
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

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Penalty: \$2 000.

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

**95. Advertisements with computer games**

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

**Table**

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

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Penalty: \$2 000.

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

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

- (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 by the Director 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).]*

## **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

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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 of sale of publications**

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

(4) In subsection (1) —

***approved form*** means a notice approved by the Minister.

[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;
- (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. Interpretation**

In this Division —

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

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

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

***objectionable material*** means —

- (a) a film classified RC, a computer game classified RC, or a publication classified RC;
- (b) child pornography;
- (c) an article that promotes crime or violence, or incites or instructs in matters of crime or violence; or
- (d) an article that describes or depicts, in a manner that is likely to cause offence to a reasonable adult —
  - (i) the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct;
  - (ii) sexual conduct with or upon the body of a dead person;
  - (iii) the use of urine or excrement in association with degrading or dehumanizing conduct or sexual conduct;
  - (iv) bestiality;
  - (v) acts of torture or the infliction of extreme violence or extreme cruelty;

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

*[Section 99 amended by No. 30 of 2003 s. 21.]*

## **100. Codes of practice**

- (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**

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

Penalty: \$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**

- (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;
  - (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 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.]*

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**102C. Calling in computer games for classification**

(1) If —

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

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

(2) If —

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

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

(3) The Director must cause notice of his or her decision under subsection (1) or (2) to be published in the Commonwealth Gazette.

(4) The Minister must cause notice of his or her decision under subsection (1) or (2) to be published in the *Government Gazette*.

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

Penalty: \$10 000.

- (6) It is a defence to a prosecution for an offence against subsection (5) to prove that the 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**

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

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

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

Penalty: \$10 000.

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- (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.]*

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

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

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

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

Penalty: \$10 000.

- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the 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. Obtaining copies for review**

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

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

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

Penalty: \$10 000.

- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the 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.]*

## **Part 8 — Exemptions and exceptions**

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

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. Defences for possession in certain circumstances**

- (1) In proceedings for an offence against Part 7 relating to possession of an article it is a defence for the person charged to prove that the person had possession of the article to which the charge relates, in good faith —
  - (a) for the purpose or with the intention of delivering it into the possession of a person lawfully entitled to have possession of it;
  - (b) for the purposes of any proceedings under this Act or any other enactment in relation to the article;
  - (c) for the purpose of giving legal advice in relation to the article;
  - (d) for the purpose of giving legal advice, or making representations, in relation to any proceedings; or
  - (e) in accordance with, or for the purpose of complying with, any decision or order made in relation to the article by the 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. Exemption of certain articles and computer services**

- (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. Exemption of approved organization**

- (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 may be made by an approved organization and must —
- (a) be in writing;
  - (b) specify the film that the organization intends to exhibit and the event at which the film is to be exhibited; and
  - (c) be accompanied by —
    - (i) a synopsis of the story or events depicted in the film; and
    - (ii) the prescribed fee.
- (3) The Minister or 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.]*

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**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. Organization may be approved**

- (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 this Part.
- (2) In considering whether to approve an organization, the Minister or Director must have regard to —
  - (a) the purpose for which the organization was formed;
  - (b) the extent to which the organization carries on activities of a medical, scientific, cultural or artistic nature;
  - (c) the reputation of the organization in relation to the screening of films; and
  - (d) the conditions as to admission of persons to the screening of films by the organization.
- (3) An approval takes effect on the date of publication of the notice referred to in subsection (1).
- (4) An approval may be revoked by the person who gave the approval if, because of a change in any matter referred to in subsection (2), that person considers that it is no longer appropriate that the organization be approved.
- (5) An approval given by the 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.]*

### **109. Appeal**

- (1) If the Director makes a decision —
- (a) to refuse an application for approval;
  - (b) to revoke an approval; or
  - (c) to refuse an application for an exemption,
- the organization may, within 28 days after notice of the decision has been given, appeal against the decision to the Minister.
- (2) An appeal is instituted by giving notice in writing of the appeal, setting out the grounds and facts on which the appellant relies.
- (3) On an appeal under this section, the Minister must consider the notice of appeal and —
- (a) affirm the decision appealed against;
  - (b) vary the decision appealed against; or
  - (c) set aside the decision and make a decision that the Minister thinks just,
- and may exercise any power conferred on the Minister by this Part.

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- (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 to prescribed person or body**

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+;
- (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;
  - (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. Proceedings against body corporate**

- (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. Commencement of prosecution for offence**

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

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

**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+;
  - (b) a publication or computer game classified RC; or
  - (c) child pornography, or an article highly likely to be, or highly likely to contain, child pornography,
- 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), (b) or (c) 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;
  - (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.]*

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

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

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

- (b) a publication, film or computer game is taken to be a copy of a product if —
  - (i) it is in the same form and has the same cover and identifying markings as the product; or
  - (ii) on a viewing, it is substantially the same as the product.

*[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. Infringement notices**

In this Division —

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

*[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;
  - (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

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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**

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. Appointment of designated persons**

- (1) The Minister may, in writing, appoint persons or classes of persons to be designated persons for the purposes of section 117D, 117E, 117F or 117G or for the purposes of 2 or more of those sections.
- (2) Without limiting subsection (1), the Minister may appoint, under that subsection, persons or classes of persons appointed under the *Public Service Act 1999* of the Commonwealth, or an Act enacted in substitution for that Act, to be designated persons for the purposes of section 117D.
- (3) A person who is authorised to give infringement notices under section 117D is not eligible to be a designated person for the purposes of any of the other sections.
- (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.

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*[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. Registered person**

- (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;
  - (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;
  - (c) the applicant, or where the applicant is a body corporate, an individual concerned with the control and

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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. Registered premises**

- (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 the approved form 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.]*

**131. Form of application**

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

- (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**

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.]*

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

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- (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.

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- (4) A member of the police force who has reasonable cause to suspect that a person to whom —
- (a) a publication is being or is about to be displayed, sold or supplied;
  - (b) a film is being or is about to be exhibited, sold or supplied; or
  - (c) a computer game is being or is about to be demonstrated, sold or supplied,

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

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

Penalty: \$200.

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

Penalty: \$500.

**141. Evidence**

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

- (a) a film, publication or computer game is, 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;
- (b) a classified film or a classified computer game specified in the certificate is, or was, modified in a manner specified in the certificate;
- (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.]*

**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;
  - (b) stating that the accused is entitled to view the publication, film or computer game;
  - (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;
    - (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 period specified in the notice (being not less than the

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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;

- (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;

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- (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 liability**

- (1) This section applies to —

- (a) the Minister;
- [(b), (c) deleted]*
- (d) the Registrar;
- [(e), (f) deleted]*
- (g) an authorised person;
- (h) an officer of the department of the Public Service principally assisting the Minister in the administration of this Act; and
- (i) a member of the police force and an officer in the Police Department<sup>2</sup>.

- (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. Interpretation**

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*<sup>3</sup>;
- (b) classification of a film under the *Censorship of Films Act 1947*<sup>3</sup>; or
- (c) classification of a video tape under the *Video Tapes Classification and Control Act 1987*<sup>3</sup>,

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

### **146. Savings provisions — publications**

- (1) In this section —

*former Act* means the *Indecent Publications and Articles Act 1902*<sup>3</sup>.

- (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 — films**

- (1) In this section —

*former Act* means the *Censorship of Films Act 1947*<sup>3</sup>.

- (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 — videos**

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

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- (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 — 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**

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

- (3) A computer game that has been refused, or is taken to have been refused, classification under the Ordinance before commencement is taken to have been classified RC under this Act.
- (4) Nothing in Part 7 of this Act applies to or in relation to a computer game published before commencement unless the computer game has been classified or refused classification.
- (5) Advertising matter in relation to a computer game that has been approved or refused approval under the Ordinance before commencement is taken to have been approved or refused approval under this section.

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

**151. Savings provisions — registration**

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

[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.

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

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

*[Schedule 1 deleted by No. 30 of 2003 s. 40.]*

### Notes

- <sup>1</sup> This reprint is a compilation as at 21 July 2006 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<sup>4</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Censorship Act 1996</i> <sup>5</sup>	40 of 1996	10 Oct 1996	5 Nov 1996 (see s. 2 and <i>Gazette</i> 5 Nov 1996 p. 5845)
<i>Censorship Amendment Act 2003</i> <sup>6</sup>	30 of 2003	26 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<b>Reprint 1: The <i>Censorship Act 1996</i> as at 28 Nov 2003</b> (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> <sup>7,8</sup>	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)
<b>Reprint 2: The <i>Classification (Publications, Films and Computer Games) Enforcement Act 1996</i> as at 21 Jul 2006</b> (includes amendments listed above)			

- <sup>2</sup> 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.
- <sup>3</sup> Repealed by s. 153 of this Act.
- <sup>4</sup> 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.
- <sup>5</sup> Now known as the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*; short title changed (see note under s. 1).

<sup>6</sup> 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.

<sup>7</sup> 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**

<b>Film and advertisement classifications</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
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**

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

<sup>8</sup> 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*.

”.