

Version No. 020
**Classification (Publications, Films and
Computer Games) (Enforcement) Act 1995**
No. 90 of 1995

Version incorporating amendments as at 26 September 2007

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Version No. 020

**Classification (Publications, Films and
Computer Games) (Enforcement) Act 1995**

No. 90 of 1995

Version incorporating amendments as at 26 September 2007

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to give effect to the Commonwealth/State/Territory scheme for the classification of publications, films and computer games set out in the Classification (Publications, Films and Computer Games) Act 1995 of the Commonwealth by—

- (a) providing for the enforcement of classification decisions made under that Act; and
- (b) prohibiting the publishing of certain publications, films and computer games; and
- (c) prohibiting certain material on on-line information services.

2 Commencement

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

- (3) If a provision referred to in subsection (2) does not come into operation within the period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

3 Definitions

In this Act—

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 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;

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 appointed under the **Public Holidays Act 1993**;

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

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

classified means classified under the Commonwealth Act and includes re-classified under that Act;

Code means the National Classification Code, set out in the Schedule to the Commonwealth Act as originally enacted, as amended in accordance with section 6 of the Commonwealth Act;

S. 3 def. of Code substituted by No. 6/2005 s. 4.

commercial quantity, in relation to publications, films or computer games, means not less than 50 copies, whether of one or more than one publication, film or computer game;

S. 3 def. of commercial quantity inserted by No. 60/1998 s. 4.

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 has the same meaning as in the Commonwealth Act;

S. 3 def. of contentious material substituted by No. 69/2001 s. 4(a).

court means the Magistrates' Court;

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

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

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;

S. 3 def. of *exempt computer game* inserted by No. 69/2001 s. 4(b).

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

S. 3 def. of *exempt film* inserted by No. 69/2001 s. 4(b).

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

film has the same meaning as in the Commonwealth Act;

guardian means an adult who is exercising parental control over a minor;

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;

S. 3 def. of *international flight* inserted by No. 69/2001 s. 4(c).

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;

S. 3 def. of *international voyage* inserted by No. 69/2001 s. 4(c).

minor means a person who is under 18;

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objectionable film means a film or an advertisement for a film, not being an approved advertisement, that—

S. 3 def. of *objectionable film* amended by No. 6/2005 ss 5(a), 10(1)(a).

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult; or

* * * * *

- (c) promotes, incites or instructs in matters of crime or violence; or
- (d) is classified RC or X 18+ or would, if classified, be classified RC or X 18+ or has been, or would be, refused approval, as the case requires;

objectionable publication means a publication that—

S. 3 def. of *objectionable publication* amended by No. 6/2005 s. 10(1)(b).

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult; or
- (b) lacks serious literary, artistic, political, educational or scientific value and describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that a reasonable adult would generally regard as unsuitable for minors; or

* * * * *

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s. 3

- (d) promotes, incites or instructs in matters of crime or violence; or
- (e) is classified RC or would, if classified, be classified RC;

S. 3 def. of *place* amended by No. 69/2001 s. 4(d).

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);

public place means any place which the public is entitled to use or which is open to, or used by the public, whether on payment of money or otherwise;

publication has the same meaning as in the Commonwealth Act;

publish includes sell, offer for sale, let on hire, exhibit, display, distribute and demonstrate;

restricted publications area means any premises, or part of any premises, constructed and managed in accordance with section 76;

S. 3 def. of *Review Board* inserted by No. 69/2001 s. 4(e).

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

sell means sell or exchange or let on hire, and includes offer or display for sale or exchange or hire, agree to sell, exchange or hire and cause or permit to be sold or exchanged or hired, whether by retail or wholesale;

S. 3 def. of *submittable publication* substituted by No. 69/2001 s. 4(f).

submittable publication has the same meaning as in the Commonwealth Act and includes a publication called in by the Director under section 60.

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—

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

5 Application of Act

This Act does not apply to—

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

S. 5
substituted by
No. 69/2001
s. 5.

PART 2—FILMS

Division 1—Exhibition of films

6 Exhibition of film in public place

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

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

Penalty: 240 penalty units or imprisonment for 2 years.

7 Display of notice about classifications

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: 5 penalty units.

8 Exhibition of RC and X 18+ films

A person must not exhibit in a public place a film classified RC or X 18+.

Penalty:

- (a) if the film is classified X 18+—60 penalty units or imprisonment for 6 months;
- (b) if the film is classified RC—240 penalty units or imprisonment for 2 years.

S. 8 (Heading)
inserted by
No. 6/2005
s. 5(b).
S. 8
amended by
No. 6/2005
s. 5(c).

S. 8(a)
amended by
No. 6/2005
s. 5(c).

s. 9

9 Exhibition of unclassified, RC, X 18+, R 18+ and MA 15+ films

S. 9 (Heading)
inserted by
No. 6/2005
s. 5(d).

A person must not exhibit any of the following so that it can be seen from a public place—

- (a) an unclassified film which would, if classified, be classified RC, X 18+, R 18+ or MA 15+; or
- (b) a film classified RC, X 18+, R 18+ or MA 15+.

S. 9(a)
amended by
No. 6/2005
s. 5(e)(i)–(iii).

S. 9(b)
amended by
No. 6/2005
s. 5(e)(i)–(iii).

Penalty:

- (c) if the film is classified, or is subsequently classified, MA 15+ or R 18+—20 penalty units;
- (d) if the film is classified, or is subsequently classified, X 18+—60 penalty units or imprisonment for 6 months;
- (e) if the film is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.

S. 9(c)
amended by
No. 6/2005
s. 5(e)(ii)(iii).

S. 9(d)
amended by
No. 6/2005
s. 5(e)(i).

10 Attendance of minor at certain films—offence by parents etc.

A person who—

- (a) is a parent or guardian of a minor; and
- (b) knows that a film classified RC, X 18+ or R 18+ or an unclassified film which would, if classified, be classified RC, X 18+ or R 18+ is to be exhibited in a public place—

S. 10(b)
amended by
No. 6/2005
s. 5(f)(i)(ii).

must not permit the minor to attend the exhibition of the film.

Penalty: 20 penalty units.

s. 11

11 Attendance of minor at certain films—offence by minor

S. 11
amended by
No. 6/2005
s. 5(g)(i)(ii).

A minor who is 10 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: 5 penalty units.

12 Private exhibition of certain films in presence of a minor

S. 12(1)
amended by
No. 6/2005
s. 5(h)(i)(ii).

(1) A person must not exhibit in a place, other than a public place, in the presence of a minor a film classified RC, X 18+ or R 18+ or an unclassified film which would, if classified, be classified RC, X 18+ or R 18+.

Penalty:

S. 12(1)(a)
amended by
No. 6/2005
s. 5(h)(ii).

(a) if the film is classified, or is subsequently classified, R 18+—20 penalty units;

S. 12(1)(b)
amended by
No. 6/2005
s. 5(h)(i).

(b) if the film is classified, or is subsequently classified, X 18+—60 penalty units or imprisonment for 6 months;

(c) if the film is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.

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

(a) the defendant believed on reasonable grounds that the minor was an adult; or

(b) the parent or guardian of the minor consented to the minor being present at the exhibition of the film.

13 Attendance of minor at R 18+ film—offence by exhibitor

S. 13
(Heading)
inserted by
No. 6/2005
s. 5(i).

- (1) 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.

S. 13(1)
amended by
No. 6/2005
s. 5(j).

Penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that—
- (a) the minor produced to the defendant or the defendant's employee or agent acceptable proof of age before the minor was admitted to the public place; or
 - (b) the defendant or the defendant's employee or agent believed on reasonable grounds that the minor was an adult.

14 Attendance of minor at MA 15+ film—offence by exhibitor

S. 14
(Heading)
inserted by
No. 6/2005
s. 5(k).

- (1) A person must not exhibit in a public place a film classified MA 15+ if—

S. 14(1)
amended by
No. 6/2005
s. 5(l).

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

Penalty: 10 penalty units.

- (2) For the purposes of subsection (1)—
- (a) a minor does not cease to be accompanied if his or her parent or guardian is temporarily absent from the exhibition of the film; and

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- (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 prosecution for an offence against subsection (1) to prove that—
 - (a) the defendant or the defendant's employee or agent took all reasonable steps to ensure that a minor was not present in contravention of subsection (1); or
 - (b) the defendant or the defendant's employee or agent believed on reasonable grounds that the minor was 15 or older; or
 - (c) the defendant or the defendant's employee or agent believed on reasonable grounds that the person accompanying the minor was the minor's parent or guardian.

Division 2—Sale of films

15 Unclassified, RC and X 18+ films

S. 15
(Heading)
inserted by
No. 6/2005
s. 5(m).

S. 15
amended by
No. 60/1998
s. 5 (ILA
s. 39B(1)).

S. 15(1)
amended by
No. 6/2005
s. 5(n)(i).

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

Penalty:

S. 15(1)(b)
amended by
No. 6/2005
s. 5(n)(ii)(iii).

- (a) if the film is subsequently classified G, PG or M—5 penalty units;
- (b) if the film is subsequently classified MA 15+ or R 18+—10 penalty units;

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- (c) if the film is classified or is subsequently classified X 18+—60 penalty units or imprisonment for 6 months; S. 15(1)(c) amended by No. 6/2005 s. 5(n)(i).
- (d) if the film is classified or is subsequently classified RC—240 penalty units or imprisonment for 2 years.
- (2) A person must not sell a commercial quantity of— S. 15(2) inserted by No. 60/1998 s. 5.
- (a) films classified X 18+; or S. 15(2)(a) amended by No. 6/2005 s. 5(n)(i).
- (b) unclassified films which would, if classified, be classified X 18+; or S. 15(2)(b) amended by No. 6/2005 s. 5(n)(i).
- (c) films that are a mixture of films referred to in paragraphs (a) and (b).
- Penalty: 240 penalty units.
- (3) A person must not sell a commercial quantity of— S. 15(3) inserted by No. 60/1998 s. 5.
- (a) films classified RC; or
- (b) unclassified films which would, if classified, be classified RC; or
- (c) films that are a mixture of films referred to in paragraphs (a) and (b).
- Penalty: 1200 penalty units or imprisonment for 10 years.
- (4) An offence against subsection (3) is an indictable offence. S. 15(4) inserted by No. 60/1998 s. 5.
-

16 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: 240 penalty units or imprisonment for 2 years.

17 Display of notice about classifications

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: 5 penalty units.

18 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 relevant consumer advice, if any, are displayed on the container, wrapping or casing of the film.

Penalty: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

- (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: in the case of a natural person,
20 penalty units;

in the case of a body corporate,
50 penalty units.

- (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: in the case of a natural person,
20 penalty units;

in the case of a body corporate,
50 penalty units.

- (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 reclassification or revocation is sufficient compliance with this section for a period of 14 days after the decision to reclassify or revoke takes effect.

S. 18(4)
substituted by
No. 69/2001
s. 6.

s. 19

19 Keeping unclassified, RC or X 18+ films with other films

S. 19
(Heading)
inserted by
No. 6/2005
s. 5(o).

S. 19(1)
amended by
No. 6/2005
s. 5(p).

(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 punishable on conviction by—

S. 19(1)(a)
amended by
No. 6/2005
s. 5(p).

(a) if the film is classified, or is subsequently classified, X 18+—a fine not exceeding 60 penalty units or imprisonment not exceeding 6 months;

(b) if the film is classified, or is subsequently classified, RC—a fine not exceeding 240 penalty units or imprisonment not exceeding 2 years.

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

20 Sale or delivery of certain films to minors

S. 20(1)
amended by
No. 6/2005
s. 5(q)(i).

(1) A person must not sell or deliver to a minor a film classified RC or X 18+ or an unclassified film which would, if classified, be classified RC or X 18+.

Penalty:

S. 20(1)(a)
amended by
No. 6/2005
s. 5(q)(i).

(a) if the film is classified, or is subsequently classified, X 18+—60 penalty units or imprisonment for 6 months;

(b) if the film is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.

-
- (2) A person must not sell or deliver to a minor a film classified R 18+, unless the person is a parent or guardian of the minor. **S. 20(2) amended by No. 6/2005 s. 5(q)(ii).**
- Penalty: 30 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that—
- (a) the minor produced to the defendant or the defendant's employee or agent acceptable proof of age before the defendant sold or delivered the film to the minor and the defendant or the defendant's employee or agent believed on reasonable grounds that the minor was an adult; or
- (b) in the case of delivery of a film classified R 18+, the minor was employed by the defendant or the defendant's employer and the delivery took place in the course of that employment. **S. 20(3)(b) amended by No. 6/2005 s. 5(q)(ii).**
- (4) A minor who is 15 or older must not buy a film classified RC, X 18+ or R 18+ knowing that it is so classified. **S. 20(4) amended by No. 6/2005 s. 5(q)(i)(ii).**
- Penalty: 5 penalty units.
- (5) A person must not sell or deliver to a minor under 15 a film classified MA 15+, unless the person is a parent or guardian of the minor. **S. 20(5) amended by No. 6/2005 s. 5(q)(iii).**
- Penalty: 10 penalty units.
- (6) It is a defence to a prosecution for an offence against subsection (5) to prove that the defendant or the defendant's employee or agent believed on reasonable grounds that—
- (a) the minor was 15 or older; or
- (b) the parent or guardian of the minor had consented to the sale or delivery.
-

Division 3—Miscellaneous

21 Power to demand name, age and address

- (1) A member of the police force who has reasonable cause to suspect that a person to whom a film is being or is about to be exhibited, sold or delivered has contravened or is about to contravene a provision of this Part may demand the person's name, age and address.
- (2) A member of the police force who makes a request under subsection (1) must inform the person of the grounds for his or her suspicion in sufficient detail to allow the person to understand the nature of the contravention.
- (3) Subject to subsection (8), a person must not give false particulars or fail or refuse to give satisfactory particulars demanded under subsection (1).
Penalty: 5 penalty units.
- (4) A person who is requested by a member under subsection (1) to state his or her name, age and address may request the member to state, orally or in writing, his or her name, rank and place of duty.
- (5) A member of the police force must not, in response to a request under subsection (4)—
 - (a) refuse or fail to comply with the request; or
 - (b) state a name or rank that is false in a material particular; or
 - (c) state as his or her place of duty an address other than the name of the police station which is the member's ordinary place of duty; or

(d) refuse to comply with the request in writing if requested to do so.

Penalty: 5 penalty units.

(6) If a member of the police force has reasonable grounds to believe that any of the particulars given by a person under subsection (1) are false, the member may require the person to produce within a reasonable time evidence of the correctness of the particulars given by the person.

(7) A person must not fail or refuse to produce satisfactory evidence of the correctness of particulars required under subsection (6).

Penalty: 1 penalty unit.

(8) If—

(a) a film is about to be exhibited in a public place in contravention of this Part; and

(b) a demand under subsection (1) is made to a person attending the exhibition; and

(c) the person immediately leaves the public place after the demand is made—

the person is not guilty of an offence against subsection (3).

22 Leaving films in certain places

(1) A person must not leave in a public place or, without the occupier's permission, on private premises—

(a) a film classified RC, X 18+, R 18+ or MA 15+; or

S. 22(1)(a)
amended by
No. 6/2005
s. 5(r)(i)–(iii).

s. 23

S. 22(1)(b)
amended by
No. 6/2005
s. 5(r)(i)–(iii).

(b) an unclassified film which would, if classified, be classified RC, X 18+, R 18+ or MA 15+.

Penalty:

S. 22(1)(c)
amended by
No. 6/2005
s. 5(r)(ii)(iii).

(c) if the film is classified, or is subsequently classified, R 18+ or MA 15+—10 penalty units;

S. 22(1)(d)
amended by
No. 6/2005
s. 5(r)(i).

(d) if the film is classified, or is subsequently classified, X 18+—60 penalty units or imprisonment for 6 months;

(e) if the film is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.

(2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the film was not, or would not be, so classified.

23 Possession or copying of film for the purpose of sale or exhibition

(1) A person who possesses—

S. 23(1)(a)
amended by
No. 6/2005
s. 5(s)(i).

(a) a film classified RC or X 18+; or

S. 23(1)(b)
amended by
No. 6/2005
s. 5(s)(i)–(iii).

(b) an unclassified film which would, if classified, be classified RC, X 18+, R 18+ or MA 15+—

with the intention of selling or exhibiting the film is guilty of an offence.

(2) A person who copies—

S. 23(2)(a)
amended by
No. 6/2005
s. 5(s)(i).

(a) a film classified RC or X 18+; or

(b) an unclassified film which would, if classified, be classified RC, X 18+, R 18+ or MA 15+—

S. 23(2)(b)
amended by
No. 6/2005
s. 5(s)(i)–(iii).

with the intention of selling or exhibiting the film or the copy is guilty of an offence.

(3) In proceedings for an offence against this section, evidence that a person made 10 or more copies of an unclassified 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.

(4) A person who is guilty of an offence against this section is liable on conviction to—

(a) if the film is classified, or is subsequently classified, R 18+ or MA 15+—a fine not exceeding 10 penalty units;

S. 23(4)(a)
amended by
No. 6/2005
s. 5(s)(ii)(iii).

(b) if the film is classified, or is subsequently classified, X 18+—a fine not exceeding 60 penalty units or imprisonment not exceeding 6 months;

S. 23(4)(b)
amended by
No. 6/2005
s. 5(s)(i).

(c) if the film is classified, or is subsequently classified, RC—a fine not exceeding 240 penalty units or imprisonment not exceeding 2 years.

23A Possession or copying of commercial quantity of RC or X 18+ films

S. 23A
(Heading)
inserted by
No. 6/2005
s. 5(t).

(1) A person who possesses a commercial quantity of—

(a) films classified RC; or

S. 23A
inserted by
No. 60/1998
s. 6.

(b) unclassified films which would, if classified, be classified RC; or

s. 23A

(c) films that are a mixture of films referred to in paragraphs (a) and (b)—

with the intention of selling or exhibiting the films is guilty of an indictable offence.

(2) A person who copies a commercial quantity of—

(a) films classified RC; or

(b) unclassified films which would, if classified, be classified RC; or

(c) films that are a mixture of films referred to in paragraphs (a) and (b)—

with the intention of selling or exhibiting the films or the copies is guilty of an indictable offence.

(3) A person who is guilty of an offence against subsection (1) or (2) is liable to a term of imprisonment not exceeding 10 years or to a fine not exceeding 1200 penalty units.

(4) A person who possesses a commercial quantity of—

(a) films classified X 18+; or

S. 23A(4)(a)
amended by
No. 6/2005
s. 5(u).

(b) unclassified films which would, if classified, be classified X 18+; or

S. 23A(4)(b)
amended by
No. 6/2005
s. 5(u).

(c) films that are a mixture of films referred to in paragraphs (a) and (b)—

with the intention of selling or exhibiting the films is guilty of an offence.

(5) A person who copies a commercial quantity of—

(a) films classified X 18+; or

S. 23A(5)(a)
amended by
No. 6/2005
s. 5(u).

(b) unclassified films which would, if classified,
be classified X 18+; or

S. 23A(5)(b)
amended by
No. 6/2005
s. 5(u).

(c) films that are a mixture of films referred to in
paragraphs (a) and (b)—

with the intention of selling or exhibiting the films
or the copies is guilty of an offence.

(6) A person who is guilty of an offence against
subsection (4) or (5) is liable to a fine not
exceeding 240 penalty units.

(7) In proceedings for an offence against a provision
of this section, evidence that a person made 50 or
more copies of an unclassified film is evidence
that the person intended to sell or exhibit the films
and, in the absence of evidence to the contrary, is
proof of that fact.

24 Making objectionable film

(1) A person must not, for the purpose of gain, make
or produce an objectionable film.

Penalty: 240 penalty units or imprisonment for
2 years.

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

PART 3—PUBLICATIONS

25 Sale of unclassified or RC publications

- (1) A person must not sell or deliver (other than for the purpose of classification or law enforcement)—
- (a) a submittable publication; or
 - (b) a publication classified RC.

Penalty:

- (c) if the publication is subsequently classified Category 1 restricted or Category 2 restricted—60 penalty units;
 - (d) if the publication is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (2) It is a defence to a prosecution for an offence against subsection (1)(a) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.
- (3) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the publication was not a submittable publication or a publication classified RC, as the case may be.
- (4) A person must not sell a commercial quantity of—
- (a) publications classified RC; or
 - (b) unclassified publications which would, if classified, be classified RC; or
 - (c) publications that are a mixture of publications referred to in paragraphs (a) and (b).

Penalty: 1200 penalty units or imprisonment for 10 years.

S. 25(4)
inserted by
No. 60/1998
s. 7.

- (5) An offence against subsection (4) is an indictable offence.

S. 25(5)
inserted by
No. 60/1998
s. 7.

26 Category 1 restricted publications

- (1) Subject to subsection (2), a person must not sell or deliver a publication classified Category 1 restricted unless—

S. 26(1)
substituted by
No. 60/1998
s. 8.

- (a) it is contained in a sealed package made of plain, opaque material; and
(b) both the publication and the package bear the determined markings.

Penalty: 60 penalty units or imprisonment for 6 months.

- (1A) For the purposes of subsection (1), *plain* does not include the title of the publication.

S. 26(1A)
inserted by
No. 60/1998
s. 8.

- (2) Subject to any condition imposed by the Board under section 13A(2) of the Commonwealth Act, if the sale or delivery takes place in a restricted publications area, the package need not be sealed but on delivery must be contained in an opaque wrapper.

S. 26(2)
amended by
No. 69/2001
s. 7(1).

- (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—

S. 26(3)
substituted by
No. 69/2001
s. 7(2).

it is sufficient compliance with subsection (1) for a period of 14 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.

27 Category 2 restricted publications

- (1) A publication that is classified Category 2 restricted must not be—
 - (a) displayed except in a restricted publications area; or
 - (b) delivered to a person who has not made a direct request for the publication; or
 - (c) delivered to a person unless it is contained in a package made of opaque material; or
 - (d) published unless it bears the determined markings.

- (2) A person must not sell, deliver or publish a publication classified Category 2 restricted that does not comply with this section.

Penalty: 60 penalty units or imprisonment for 6 months.

- (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 subsection (1)(d) for a period of 14 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.

S. 27(3)
substituted by
No. 69/2001
s. 8.

27A Sale or delivery of publications contrary to conditions

S. 27A
inserted by
No. 69/2001
s. 9.

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 deliver the publication except in accordance with that condition.

Penalty: 60 penalty units or imprisonment for 6 months.

27B Consumer advice for Unrestricted publications

S. 27B
inserted by
No. 69/2001
s. 9.

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: 60 penalty units or imprisonment for 6 months.

28 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: 60 penalty units or imprisonment for 6 months.

- (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: 60 penalty units or imprisonment for 6 months.

S. 28(3)
substituted by
No. 69/2001
s. 10.

- (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 14 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.

29 Sale of restricted publications to minors

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

Penalty: 60 penalty units or imprisonment for 6 months.

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

30 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:

- (c) if the publication is classified, or is subsequently classified, Category 1 restricted or Category 2 restricted—60 penalty units or imprisonment for 6 months;
- (d) if the publication is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that—
- (a) since the offence was alleged to have been committed, the publication has been classified Unrestricted; or
- (b) the defendant believed on reasonable grounds that the publication was not a submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC, as the case may be; or
- (c) in the case of a publication classified Category 1 restricted, the public place was a shop or stall and the publication and packaging complied with section 26; or
- (d) in the case of a publication classified Category 2 restricted, the defendant believed on reasonable grounds that the public place was a restricted publications area.
- (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:

- (c) if the publication is classified, or is subsequently classified, Category 1 restricted or Category 2 restricted—60 penalty units or imprisonment for 6 months;
 - (d) if the publication is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (4) It is a defence to a prosecution for an offence against subsection (3)(a) to prove that since the offence was alleged to have been committed, the publication has been classified Unrestricted.
- (5) It is a defence to a prosecution for an offence against subsection (3) to prove that the defendant believed on reasonable grounds that the publication was not a submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC, as the case may be.

31 Possession or copying of publication for the purpose of publishing

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

Penalty:

- (c) if the publication is subsequently classified Category 1 restricted or Category 2 restricted—60 penalty units or imprisonment for 6 months;
- (d) if the publication is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.

- (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) A person must not possess or copy a commercial quantity of—
- (a) publications classified RC; or
 - (b) unclassified publications which would, if classified, be classified RC; or
 - (c) publications that are a mixture of publications referred to in paragraphs (a) and (b)—

S. 31(3)
inserted by
No. 60/1998
s. 9.

with the intention of selling the publications or the copies.

Penalty: 1200 penalty units or imprisonment for 10 years.

- (4) An offence against subsection (3) is an indictable offence.

S. 31(4)
inserted by
No. 60/1998
s. 9.

32 Producing objectionable publications

- (1) A person must not print or otherwise make or produce an objectionable publication for the purpose of publishing it.

Penalty: 240 penalty units or imprisonment for 2 years.

- (2) A prosecution for an offence against this section may be brought at any time.

33 Display of certain parts of publications and advertisements

- (1) A person must not exhibit or display for sale in a public place to which minors have access any publication or advertisement for a publication if any part of that publication or advertisement depicts or deals with nudity, sex, drug misuse, crime, cruelty, violence or revolting phenomena in a manner that a reasonable adult would consider unsuitable for general public display unless—
- (a) that part of the publication or advertisement is concealed by a cover; or
 - (b) the publication or advertisement is displayed in a rack that conceals that part; or
 - (c) for some other reason that part of the publication or advertisement cannot be seen without being handled.

Penalty: 10 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant or the defendant's employee or agent took reasonable precautions to ensure that the publication or advertisement was not exhibited or displayed in contravention of subsection (1).
-

PART 4—COMPUTER GAMES

34 Sale or demonstration of computer game

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

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

Penalty: 240 penalty units or imprisonment for 2 years.

35 Display of notice about classifications

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: 5 penalty units.

36 Unclassified and RC computer games

(1) A person must not—

- (a) sell; or
- (b) demonstrate in a public place—

a computer game classified RC or an unclassified computer game which would, if classified, be classified RC.

Penalty: 240 penalty units or imprisonment for 2 years.

s. 37

- (2) A minor who is 10 or older must not buy a computer game classified RC, knowing that it is so classified.

Penalty: 5 penalty units.

S. 36(3)
inserted by
No. 60/1998
s. 10.

- (3) A person must not sell a commercial quantity of—
- (a) computer games classified RC; or
 - (b) unclassified computer games which would, if classified, be classified RC; or
 - (c) computer games that are a mixture of computer games referred to in paragraphs (a) and (b).

Penalty: 1200 penalty units or imprisonment for 10 years.

S. 36(4)
inserted by
No. 60/1998
s. 10.

- (4) An offence against subsection (3) is an indictable offence.

S. 37
(Heading)
inserted by
No. 6/2005
s. 6(a).

37 MA 15+ computer games

S. 37
amended by
No. 6/2005
s. 6(b).

A person must not demonstrate a computer game classified MA 15+ in a public place unless—

- (a) the determined markings are exhibited before the computer game can be played; and
- (b) entry to the place is restricted to adults or minors who are in the care of a parent or guardian while in the public place.

Penalty: 5 penalty units.

38 Demonstration of unclassified, RC and MA 15+ computer games

S. 38
(Heading)
inserted by
No. 6/2005
s. 6(c).

A person must not demonstrate any of the following so that it can be seen from a public place—

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

S. 38(a)
amended by
No. 6/2005
s. 6(d).

S. 38(b)
amended by
No. 6/2005
s. 6(d).

Penalty:

- (c) if the computer game is classified, or is subsequently classified, MA 15+—
20 penalty units;
- (d) if the computer game is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.

S. 38(c)
amended by
No. 6/2005
s. 6(d).

39 Private demonstration of RC computer games in presence of a minor

- (1) A person must not demonstrate in a place, other than a public place, in the presence of a minor a computer game classified RC or an unclassified computer game which would, if classified, be classified RC.

Penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that—
 - (a) the defendant believed on reasonable grounds that the minor was an adult; or
 - (b) the parent or guardian of the minor consented to the minor being present at the demonstration of the computer game.

40 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: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

- (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: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

- (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: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

- (3A) 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: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

(3B) If two or more computer games are available for playing on a device referred to in subsection (3A), 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.

S. 40(3B)
inserted by
No. 69/2001
s. 11(1).

(4) 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—

S. 40(4)
substituted by
No. 69/2001
s. 11(2).

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 14 days after the decision to reclassify or revoke takes effect.

41 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 punishable on conviction by—

s. 42

S. 41(1)(a)
amended by
No. 6/2005
s. 6(e).

- (a) if the computer game is subsequently classified MA 15+—a fine not exceeding 60 penalty units or imprisonment not exceeding 6 months;
 - (b) if the computer game is classified, or is subsequently classified, RC—a fine not exceeding 240 penalty units or imprisonment not exceeding 2 years;
 - (c) in any other case—30 penalty units.
- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant did not know, and could not reasonably have known, that the computer game was on the premises.

42 Sale or delivery of certain computer games to minors

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

Penalty: 240 penalty units or imprisonment for 2 years.

- (2) A person must not sell or deliver to a minor who is under 15 a computer game classified MA 15+, unless the person is a parent or guardian of the minor.

Penalty: 30 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the defendant or the defendant's employee or agent believed on reasonable grounds that—

- (a) the minor was 15 or older; or
- (b) the parent or guardian of the minor had consented to the sale or delivery.

S. 42(2)
amended by
No. 6/2005
s. 6(f).

43 Power to demand name, age and address

- (1) A member of the police force who has reasonable cause to suspect that a person to whom a computer game is being or is about to be demonstrated, sold or delivered has contravened or is about to contravene a provision of this Part may demand the person's name, age and address.
- (2) A member of the police force who makes a request under subsection (1) must inform the person of the grounds for his or her suspicion in sufficient detail to allow the person to understand the nature of the contravention.
- (3) Subject to subsection (8), a person must not give false particulars or fail or refuse to give satisfactory particulars demanded under subsection (1).

Penalty: 5 penalty units.

- (4) A person who is requested by a member under subsection (1) to state his or her name, age and address may request the member to state, orally or in writing, his or her name, rank and place of duty.
- (5) A member of the police force must not, in response to a request under subsection (4)—
 - (a) refuse or fail to comply with the request; or
 - (b) state a name or rank that is false in a material particular; or
 - (c) state as his or her place of duty an address other than the name of the police station which is the member's ordinary place of duty; or
 - (d) refuse to comply with the request in writing if requested to do so.

Penalty: 5 penalty units.

- (6) If a member of the police force has reasonable grounds to believe that any of the particulars given by a person under subsection (1) are false, the member may require the person to produce within a reasonable time evidence of the correctness of the particulars given by the person.
- (7) A person must not fail or refuse to produce satisfactory evidence of the correctness of particulars required under subsection (6).

Penalty: 1 penalty unit.

- (8) If—
- (a) a computer game is about to be demonstrated in a public place in contravention of this Part; and
 - (b) a demand under subsection (1) is made to a person attending the demonstration; and
 - (c) the person immediately leaves the public place after the demand is made—
- the person is not guilty of an offence against subsection (3).

44 Leaving computer games in certain places

- (1) A person must not leave in a public place or, without the occupier's permission, on private premises—
- (a) a computer game classified RC or MA 15+;
or
 - (b) an unclassified computer game which would, if classified, be classified RC or MA 15+.

S. 44(1)(a)
amended by
No. 6/2005
s. 6(g).

S. 44(1)(b)
amended by
No. 6/2005
s. 6(g).

Penalty:

- (c) if the computer game is classified, or is subsequently classified, MA 15+—60 penalty units or imprisonment for 6 months;
 - (d) if the computer game is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the computer game was not, or would not be, so classified.

S. 44(1)(c)
amended by
No. 6/2005
s. 6(g).

45 Possession or copying of computer game for the purpose of sale or demonstration

- (1) A person must not possess—
- (a) a computer game classified RC; or
 - (b) an unclassified computer game—
- with the intention of selling or demonstrating the computer game.

Penalty:

- (c) if the computer game is subsequently classified MA 15+—60 penalty units or imprisonment for 6 months;
 - (d) if the computer game is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years;
 - (e) in any other case—30 penalty units.
- (2) A person must not copy—
- (a) a computer game classified RC; or
 - (b) an unclassified computer game—
- with the intention of selling or demonstrating the computer game or the copy.

S. 45(1)(c)
amended by
No. 6/2005
s. 6(h)(i).

s. 45A

Penalty:

S. 45(2)(c)
amended by
No. 6/2005
s. 6(h)(i).

- (c) if the computer game is subsequently classified MA 15+—60 penalty units or imprisonment for 6 months;
- (d) if the computer game is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years;
- (e) in any other case—30 penalty units.

S. 45(3)
amended by
No. 6/2005
s. 6(h)(ii)(iii).

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) to prove that since the offence was alleged to have been committed the computer game has been classified M, PG or G.
- (4) In proceedings for an offence against this section, evidence that a person made 10 or more copies of an unclassified 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.

S. 45A
inserted by
No. 60/1998
s. 11.

45A Possession or copying of commercial quantity of RC computer games

- (1) A person must not possess a commercial quantity of—
 - (a) computer games classified RC; or
 - (b) unclassified computer games which would, if classified, be classified RC; or
 - (c) computer games that are a mixture of computer games referred to in paragraphs (a) and (b)—

with the intention of selling or demonstrating the computer games.

Penalty: 1200 penalty units or imprisonment for 10 years.

-
- (2) A person must not copy a commercial quantity of—
- (a) computer games classified RC; or
 - (b) unclassified computer games which would, if classified, be classified RC; or
 - (c) computer games that are a mixture of computer games referred to in paragraphs (a) and (b)—

with the intention of selling or demonstrating the computer games or the copies.

Penalty: 1200 penalty units or imprisonment for 10 years.

- (3) An offence against subsection (1) or (2) is an indictable offence.
- (4) In proceedings for an offence against a provision of this section, evidence that a person made 50 or more copies of an unclassified computer game is evidence that the person intended to sell or demonstrate the computer games and, in the absence of evidence to the contrary, is proof of that fact.
-

PART 5—ADVERTISEMENTS

46 Certain advertisements not to be published

A person must not publish an advertisement for a film or publication or computer game—

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

Penalty: 50 penalty units.

47 Certain films, publications 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; or

S. 46(ba)
inserted by
No. 69/2001
s. 12(1).

- (b) a film classified RC or X 18+; or
- (c) a submittable publication; or
- (d) a publication classified RC; or
- (e) an unclassified computer game; or
- (f) a computer game classified RC.

S. 47(1)(b)
amended by
No. 6/2005
s. 7(a).

Penalty: 50 penalty units.

(2) For the purposes of this section, if—

- (a) a person publishes an advertisement for an unclassified film or an unclassified computer game at the request of another person; and
- (b) the person who publishes the advertisement notifies a member of the police force of the identity of the other person—

that other person alone must be taken to have published it.

48 Screening of advertisements with feature films

A person must not screen in a public place an advertisement for a film during a program 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.

Classification (Publications, Films and Computer Games) (Enforcement) Act
1995
No. 90 of 1995
Part 5—Advertisements

s. 49

S. 48 (Table)
amended by
No. 6/2005
s. 7(b)(i)(ii).

TABLE

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

Penalty: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

49 Liability for certain advertisements

S. 49(1)
amended by
No. 6/2005
s. 7(c)(i)–(iii).

- (1) A person must not screen in a public place, or so that it can be seen from a public place, an advertisement for a film classified X 18+, R 18+ or MA 15+.

Penalty: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

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

S. 49(2)(a)
amended by
No. 6/2005
s. 7(c)(ii)(iii).

- (a) if the advertised film is classified MA 15+, the advertisement was screened during a program for the exhibition of a film classified R 18+ or MA 15+; or

S. 49(2)(b)
amended by
No. 6/2005
s. 7(c)(ii).

- (b) if the advertised film is classified R 18+, the advertisement was screened during a program for the exhibition of a film classified R 18+; or

s. 50

(c) if the advertised film is classified R 18+ or MA 15+, the place in which the advertisement was screened was a restricted publications area.

S. 49(2)(c)
amended by
No. 6/2005
s. 7(c)(ii)(iii).

50 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

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

S. 50 (Table)
amended by
No. 6/2005
s. 7(d)(i)(ii).

Penalty: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

51 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.

Classification (Publications, Films and Computer Games) (Enforcement) Act
1995
No. 90 of 1995
Part 5—Advertisements

s. 52

S. 51 (Table)
amended by
No. 6/2005
s. 7(e)(i)–(iii).

TABLE

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

Penalty: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

52 Advertisement to contain determined markings and consumer advice

- (1) A person must not publish an advertisement for a classified film or a classified publication or a classified computer game unless—
- (a) the advertisement contains the determined markings relevant to the classification of the film, publication or computer game and relevant consumer advice, if any; and
 - (b) the determined markings and consumer advice are displayed—
 - (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.

Penalty: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

(2) If—

- (a) a film, publication 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 film, publication or computer game under section 22B(3) of that Act—

S. 52(2)
substituted by
No. 69/2001
s. 12(2).

display of the determined markings and consumer advice applicable to the film, publication or computer game before that reclassification or revocation is sufficient compliance with subsection (1) for a period of 14 days after the decision to reclassify or revoke takes effect.

53 Misleading or deceptive advertisements

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

Penalty:

- (a) if the film, publication or computer game is subsequently classified RC—240 penalty units or imprisonment for 2 years;
- (b) in the case of a film subsequently classified X 18+—60 penalty units or imprisonment for 6 months;
- (c) in any other case—
 - in the case of a natural person, 20 penalty units;
 - in the case of a body corporate, 50 penalty units.

S. 53(1)(b)
amended by
No. 6/2005
s. 7(f).

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

s. 54

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

Penalty:

- (a) if the film, publication or computer game is classified RC—240 penalty units or imprisonment for 2 years;
- (b) in the case of a film classified X 18+—60 penalty units or imprisonment for 6 months;
- (c) in any other case—
in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

S. 53(2)(b)
amended by
No. 6/2005
s. 7(f).

(3) If—

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

publication of the determined markings applicable to the film, publication or computer game before that reclassification or revocation is sufficient compliance with subsection (2) for a period of 14 days after the decision to reclassify or revoke takes effect.

54 Advertisements for Category 2 restricted publications

- (1) A person must not publish an advertisement for a publication classified Category 2 restricted.

Penalty: 60 penalty units or imprisonment for 6 months.

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- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that the advertisement was published—
- (a) in a publication classified Category 2 restricted; or
 - (b) in a restricted publications area.
- (3) If an advertisement for a publication classified Category 2 restricted is published in a place other than a restricted publications area, the occupier of the place is guilty of an offence punishable on conviction by a fine not exceeding 60 penalty units or imprisonment not exceeding 6 months.

55 Classification symbols etc. to be published with advertisements

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

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

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

Penalty: in the case of a natural person,
20 penalty units;
in the case of a body corporate,
50 penalty units.

PART 6—ON-LINE INFORMATION SERVICES

56 Definitions

In this Part—

S. 56 def. of
*material
unsuitable for
minors of
any age*
amended by
No. 6/2005
s. 7(g)(i).

material unsuitable for minors of any age

means—

- (a) objectionable material; or
- (b) a film that is classified R 18+ or would, if classified, be classified R 18+; or
- (c) a publication that is classified Category 1 restricted or Category 2 restricted, or would, if classified, be classified Category 1 restricted or Category 2 restricted;

S. 56 def. of
*material
unsuitable
for minors
under 15*
amended by
No. 6/2005
s. 7(g)(ii)(iii).

material unsuitable for minors under 15

means—

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

S. 56 def. of
*objectionable
material*
amended by
No. 6/2005
s. 10(2).

objectionable material means—

- (a) an objectionable publication; or
- (b) an objectionable film; or
- (c) a computer game that—
 - (i) depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that it offends against the standards of morality, decency

and propriety generally accepted
by reasonable adults to the extent
that it should not be classified; or

* * * * *

- (iii) promotes, incites or instructs in matters of crime or violence; or
- (iv) is unsuitable for a minor to see or play; or
- (v) is classified RC or would, if classified, be classified RC;

on-line information service means a service which permits, through a communication system, on-line computer access to or transmission of data or computer programs.

57 Publication or transmission of objectionable material

- (1) A person must not use an on-line information service to publish or transmit, or make available for transmission, objectionable material.

Penalty: 240 penalty units or imprisonment for 2 years.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the material was not objectionable material.
- (3) Subsection (1) does not apply to a person who provides an on-line information service or a telecommunication service unless the person creates or knowingly downloads or copies objectionable material.

s. 57A

S. 57A
inserted by
No. 69/2001
s. 16,
amended by
No. 6/2005
s. 10(3).

57A Publication or transmission of child pornography

A person who knowingly uses an on-line information service to publish or transmit, or make available for transmission, objectionable material that describes or depicts a person who is, or looks like, a minor engaging in sexual activity or depicted in an indecent sexual manner or context is guilty of an indictable offence and liable to a term of imprisonment not exceeding 10 years.

58 Publication or transmission of certain material to minors

- (1) A person must not use an on-line information service to publish or transmit, or make available for transmission, to a minor material unsuitable for minors of any age.

Penalty:

- (a) if the material is objectionable material—
240 penalty units or imprisonment for 2 years;
- (b) in any other case—60 penalty units or imprisonment for 6 months.
- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that—
- (a) the defendant—
- (i) did not know and could not reasonably have known that the person to whom the material was published or transmitted or made available for transmission was a minor; and
- (ii) had taken reasonable steps to avoid publishing or transmitting, or making available for transmission, the material to a minor; or

-
- (b) the defendant believed on reasonable grounds that the material was not material unsuitable for minors of any age.
- (3) Subsection (1) does not apply to a person who provides an on-line information service or a telecommunication service unless the person knowingly publishes, transmits or makes available for transmission to a minor material unsuitable for minors of any age.
- (4) A person must not use an on-line information service to publish or transmit, or make available for transmission, material to a minor under 15 knowing it to be material unsuitable for minors under 15.
- Penalty: 30 penalty units.
- (5) It is a defence to a prosecution for an offence against subsection (4) to prove that—
- (a) the defendant believed on reasonable grounds that the parent or guardian of the minor had consented to the material being published or transmitted, or made available for transmission, to the minor; or
- (b) the defendant—
- (i) did not know and could not reasonably have known that the person to whom the material was published or transmitted, or made available for transmission, was a minor under 15; and
- (ii) had taken reasonable steps to prevent publishing or transmitting, or making available for transmission, the material to a minor under 15.

-
- (6) Subsection (4) does not apply to a person who provides an on-line information service or a telecommunication service unless the person knowingly publishes, transmits or makes available for transmission to a minor under 15 material unsuitable for minors under 15.

59 Advertising of objectionable material etc.

A person must not—

- (a) publish an advertisement or notice; or
- (b) transmit, or make available for transmission, on an on-line information service an advertisement or notice; or
- (c) knowingly allow an on-line information service to be used for publishing or transmitting, or making available for transmission, an advertisement or notice—

that objectionable material is available for on-line computer access.

Penalty: 240 penalty units or imprisonment for 2 years.

PART 7—CALL-IN PROVISIONS

60 Calling in submittable publications for classification

(1) If—

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

the Director 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 a decision under subsection (1) to be published in the Commonwealth Gazette.
- (3) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.

Penalty: 100 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) to prove that the defendant did not intend—
 - (a) to publish the publication in Victoria; or
 - (b) to cause, authorise, permit or license the publication to be published in Victoria.

s. 60A

S. 60A
inserted by
No. 69/2001
s. 13.

60A Calling in films for classification

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

the Director 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 a decision under subsection (1) to be published in the Commonwealth Gazette.
- (3) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.

Penalty: 100 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) to prove that the defendant did not intend—
- (a) to publish the film in Victoria; or
 - (b) to cause, authorise, permit or license the film to be published in Victoria.

61 Calling in computer games for classification

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

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

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

(1A) If—

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

S. 61(1A)
inserted by
No. 69/2001
s. 14(1).

the Director 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.

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

S. 61(2)
amended by
No. 69/2001
s. 14(2).

Penalty: 100 penalty units.

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

62 Calling in advertisements

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

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: 100 penalty units.

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

62A Calling in a publication, film or computer game for reclassification

S. 62A
inserted by
No. 69/2001
s. 15.

- (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 Victoria or has an office in Victoria—

the Director 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: 100 penalty units.

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

62B Obtaining copies for review

S. 62B
inserted by
No. 69/2001
s. 15.

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

(c) the original applicant or the publisher of the publication, film or computer game resides in Victoria or has an office in Victoria—

the Director 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 the 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: 100 penalty units.

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

PART 8—EXEMPTIONS

63 Exemption of film, publication, computer game or advertisement

The Director may, on application, direct in writing that this Act does not apply, to the extent and subject to any condition specified in the direction, to or in relation to any film, publication, computer game or advertisement.

64 Exemption of approved organisation

- (1) The Director may, on application under section 67, direct in writing that this Act does not apply, or any of the provisions of this Act do not apply, to an organisation approved under section 66 in relation to the exhibition of a film at an event, where the film and the event are specified in the direction.

S. 64
amended by
No. 79/2006
s. 6 (ILA
s. 39B(1)).

- (2) The Director may, on application under section 67, direct in writing that this Act does not apply, to the extent and subject to any condition specified in the direction, to an organisation approved under section 66A in respect of all or any of its activities or functions that relate to films or computer games.

S. 64(2)
inserted by
No. 79/2006
s. 6.

65 Ministerial directions or guidelines

In considering whether to make a direction under section 63 or 64, the Director must give effect to any directions or guidelines issued by the Minister in relation to the application of this Act.

s. 66

66 Approval of organisation in relation to event

S. 66 (Heading)
inserted by
No. 79/2006
s. 7(1).

S. 66(1)
amended by
No. 79/2006
s. 7(2)(a).

(1) The Director, by notice published in the Commonwealth Gazette, may, on application, approve an organisation for the purposes of section 64(1).

S. 66(2)
amended by
No. 79/2006
s. 7(2)(b).

(2) In considering whether to approve an organisation under this section, the Director must have regard to—

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

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

(4) The Director may revoke an approval if, because of a change in any matter referred to in subsection (2), he or she considers that it is no longer appropriate that the organisation be approved.

(5) The Director must notify an organisation 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.

- (6) Revocation of an approval takes effect on the date of the decision to revoke or on a later date specified in the notice.

66A Approval of organisation in relation to activities or functions

S. 66A
inserted by
No. 79/2006
s. 8.

- (1) The Director, by notice published in the Commonwealth Gazette, may, on application, approve an organisation for the purposes of section 64(2) if the organisation—
- (a) is established by or under an Act; and
 - (b) carries on activities of an educational, cultural or artistic nature.
- (2) In considering whether to approve an organisation under this section, the Director must have regard to—
- (a) the purpose for which the organisation was established; and
 - (b) the extent to which the organisation carries on activities of an educational, cultural or artistic nature; and
 - (c) the reputation of the organisation in relation to—
 - (i) the screening of films; or
 - (ii) the possession or demonstration of computer games—as the case may be; and
 - (d) the conditions as to admission of persons to—
 - (i) the screening of films by the organisation; or

(ii) the demonstration of computer games
by the organisation—

as the case may be.

Note

Section 3 contains a definition of *demonstrate*.

- (3) An approval takes effect on the date of publication of the notice referred to in subsection (1).
- (4) The Director—
- (a) must revoke an approval if the organisation no longer satisfies the requirements of subsections (1)(a) and (1)(b); and
 - (b) may revoke an approval if, because of a change in any matter referred to in subsection (2), the Director considers that it is no longer appropriate that the organisation be approved.
- (5) The Director must notify an organisation 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.
- (6) Revocation of an approval takes effect on the date of the decision to revoke or on a later date specified in the notice.

67 Application by approved organisation for exemption

- (1) An approved organisation may apply to the Director for an exemption under section 64.

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- (2) An application for an exemption under section 64(1) must—
- (a) be in writing; and
 - (b) specify the film which the organisation 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, if any.
- (2A) An application for an exemption under section 64(2) must—
- (a) be in the approved form; and
 - (b) specify the extent of the exemption sought; and
 - (c) be accompanied by the prescribed fee, if any.
- (3) The Director must notify an organisation 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.

S. 67(2)
amended by
No. 79/2006
s. 9(1)(a).

S. 67(2)(c)(ii)
amended by
No. 79/2006
s. 9(1)(b).

S. 67(2A)
inserted by
No. 79/2006
s. 9(2).

PART 9—ENFORCEMENT

68 Interpretation

- (1) For the purposes of this Part, a thing is connected with a particular offence if—
 - (a) the offence has been committed with respect to it; or
 - (b) it will afford evidence of the commission of the offence; or
 - (c) it was used, or it is intended to be used, for the purpose of committing the offence.
- (2) In this Part, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing will be committed.
- (3) Where a member of the police force is authorised under this Part to enter a place, and enters that place, a reference in this Part to the occupier of the place includes a reference to a person whom the member believes on reasonable grounds to be the occupier, or to be in charge, of that place.

69 Entry, search and seizure

A member of the police force may enter any place, and may search for and seize anything that the member believes on reasonable grounds to be connected with an offence against this Act that is found on or in the place if the entry, search and seizure are made—

- (a) with the informed consent of the occupier of the place; or
- (b) in accordance with a warrant issued under section 71.

70 Informed consent

- (1) An occupier of any place gives informed consent to a request to enter and search the place if he or she consents to the request after a member of the police force informs the occupier—
 - (a) of the purpose of the search; and
 - (b) that anything seized during the search may be used in evidence in court; and
 - (c) that the occupier may refuse to give consent to the entry and search.
- (2) If an occupier consents to an entry and search, the member of the police force who requested consent must ask the occupier to sign an acknowledgment in the prescribed form stating—
 - (a) that the occupier has been informed of the purpose of the search and that anything seized during the search may be used in evidence in court; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search; and
 - (c) that the occupier has given such consent; and
 - (d) the date and time of the giving of such consent.
- (3) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment immediately.
- (4) If, in any proceeding, an acknowledgment is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to an entry and search.

71 Search warrant

- (1) A member of the police force may apply to a magistrate for the issue of a search warrant in relation to a particular place if the member believes on reasonable grounds that there is or has been or will be a contravention of this Act on or in the place.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of a member of the police force that there are reasonable grounds for suspecting that there is, or may be within the next 28 days, a thing or things of a particular kind connected with an offence against this Act on or in a place, the magistrate may issue in accordance with the **Magistrates' Court Act 1989** a search warrant authorising a member named in the warrant—
 - (a) to enter the place specified in the warrant, if necessary by force; and
 - (b) to search for and seize a thing named or described in the warrant and which the member believes on reasonable grounds to be connected with the offence.
- (3) A search warrant issued under this section must state—
 - (a) the purpose for which the search is required and the nature of the offence suspected; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

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- (4) Except as provided by this Act, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

72 Announcement before entry

- (1) On executing a search warrant, the member executing the warrant must announce that he or she is authorised by the warrant to enter the place and, if the member has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.
- (2) A member need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

73 Details of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the member of the police force must—

- (a) identify himself or herself to that person; and
- (b) give to the person a copy of the warrant.

74 Seizure of things not mentioned in warrant

If, in the course of executing a search warrant, a member of the police force finds a thing that he or she believes on reasonable grounds to be—

- (a) connected with the offence although not the thing, or kind of thing, named or described in the warrant; or

(b) connected with another offence against this Act—

and the member believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant is deemed to authorise the member to seize the thing.

75 Forfeiture

(1) If a person is charged with an offence in relation to—

(a) a film classified RC or X 18+; or

(b) a publication or computer game classified RC; or

(c) an objectionable film or objectionable publication—

and the court is satisfied that the person committed the offence, the court may order that the film, publication or computer game is forfeited to the Crown.

(2) If, despite the acquittal of a person charged with an offence referred to in subsection (1), the court is satisfied that an offence has been committed in relation to the film, publication or computer game, the court may order that the film, publication or computer game is forfeited to the Crown.

S. 75(1)(a)
amended by
No. 6/2005
s. 7(h).

(3) If—

S. 75(3)
amended by
No. 60/1998
s. 12(1)(a).

(a) a film classified RC or X 18+; or

S. 75(3)(a)
amended by
No. 6/2005
s. 7(h).

(b) a publication or computer game classified
RC; or

(c) an objectionable film or objectionable
publication—

has been lawfully seized by a member of the
police force but at the expiration of 12 months
after the seizure no person has been charged with
an offence in relation to the seized item, the film,
publication or computer game is forfeited to the
Crown.

(3A) If a film, publication or computer game, other
than one referred to in subsection (3)(a), (b) or (c),
has been lawfully seized by a member of the
police force and the member believes on
reasonable grounds that a person, other than a
person charged with an offence in relation to the
seized item, is the owner of the seized item, the
member must give notice in writing to the person
of—

S. 75(3A)
inserted by
No. 60/1998
s. 12(2).

(a) the date and place of seizure; and

(b) the nature of the seized item.

(3B) A person to whom notice is given under
subsection (3A) may apply within 60 days after
the notice to the Magistrates' Court for the return
of the film, publication or computer game.

S. 75(3B)
inserted by
No. 60/1998
s. 12(2).

s. 75

S. 75(4)
amended by
No. 60/1998
s. 12(1)(b).

(4) The owner of a film, publication or computer game that has been lawfully seized by a member of the police force may apply within 60 days of the seizure to the Magistrates' Court for the return of the film, publication or computer game.

S. 75(4A)
inserted by
No. 60/1998
s. 12(3).

(4A) An applicant under subsection (4) must give notice in writing of the application to the Chief Commissioner of Police containing—

- (a) the name and address of the applicant; and
- (b) the address of the premises from which the film, publication or computer game was seized; and
- (c) the date of seizure; and
- (d) the nature of the seized item the return of which is sought.

S. 75(5)
amended by
No. 60/1998
s. 12(1)(c)(i)(ii).

(5) On an application under subsection (3B) or (4), if the Magistrates' Court is satisfied that the applicant is the owner of the film, publication or computer game, the Court must order that, at the expiration of 12 months after the seizure, the film, publication or computer game be returned to the applicant unless the applicant has been charged with an offence in relation to the film, publication or computer game.

S. 75(6)
amended by
No. 60/1998
s. 12(4).

(6) Subject to subsection (7), a film, publication or computer game which is forfeited under this section may be destroyed or otherwise dealt with as directed by the Minister or, if a court orders the forfeiture, as directed by the court.

S. 75(7)
inserted by
No. 60/1998
s. 12(5).

(7) The Minister or court must not direct the destruction of a film, publication or computer game 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.

75A Forfeiture—commercial quantity etc.

(1) If a person is found guilty of an offence in relation to a commercial quantity of films, publications or computer games, any other film, publication or computer game that was seized at the same time from the same premises as the commercial quantity is forfeited to the Crown at the expiry of 30 days after the finding of guilt unless the Magistrates' Court makes an order under subsection (4).

S. 75A
(Heading)
inserted by
No. 6/2005
s. 8(1).
S. 75A
inserted by
No. 60/1998
s. 13.

(1A) If a person is found guilty of one or more offences against this Act, regardless of the number of charges filed, in relation to 10 or more—

S. 75A(1A)
inserted by
No. 6/2005
s. 8(2).

- (a) films classified RC or X or X 18+; or
- (b) publications or computer games classified RC; or
- (c) objectionable films or objectionable publications—

any other film, publication or computer game that was seized at the same time from the same premises as the items referred to in paragraph (a), (b) or (c) is forfeited to the Crown at the expiry of 30 days after the finding of guilt unless the Magistrates' Court makes an order under subsection (4).

(2) If an application for an order under subsection (4) is made within the period of 30 days referred to in subsection (1) or (1A), the operation of subsection (1) or (1A) is suspended until the application is determined.

S. 75A(2)
amended by
No. 6/2005
s. 8(3).

(3) An applicant for an order under subsection (4) must give notice of the application to the Chief Commissioner of Police.

s. 75A

S. 75A(4)(a)
amended by
No. 6/2005
s. 8(4).

(4) If the Magistrates' Court is satisfied that—

(a) the applicant is the owner of a film, publication or computer game seized at the same time from the same premises as a commercial quantity or the items referred to in paragraph (a), (b) or (c) of subsection (1A), as the case may be; and

S. 75A(4)(b)
amended by
No. 6/2005
s. 7(i).

(b) the seized item is classified with a classification other than RC or, in the case of a film, RC or X 18+—

the Magistrates' Court may make an order that the item be returned to the applicant and that the applicant's costs (including costs of classification) be paid by the Chief Commissioner.

(5) Subject to subsection (6), a film, publication or computer game which is forfeited under this section may be destroyed or otherwise dealt with as directed by the Minister or the Magistrates' Court.

(6) The Minister or court must not direct the destruction of a film, publication or computer game before the expiry of the time allowed for instituting an appeal against a refusal to make an order under subsection (4) or, if an appeal is lodged within that time, before the determination of the appeal.

PART 10—GENERAL

76 Restricted publications area—construction and management

- (1) A restricted publications area must be so constructed that no part of the interior of the area is visible to any person outside the area.
- (2) Each entrance to a restricted publications area—
 - (a) must be fitted with a gate or door capable of excluding persons from the area; and
 - (b) must be closed by means of that gate or door when the area is not open to the public.
- (3) A restricted publications area must be managed by an adult who must be in attendance in or near the area at all times when the area is open to the public.
- (4) The manager of a restricted publications area must cause a notice in the form in the Schedule, in legible letters not less than 15 millimetres in height and of a colour that contrasts with the background colour of the notice, to be displayed in a prominent place on or near each entrance to the area, so that it is clearly visible from outside the area.
- (5) If any of the requirements of this section are contravened, the owner of the business which occupies the restricted publications area is guilty of an offence punishable on conviction by a fine not exceeding 40 penalty units.

77 Restricted publications area—offences

- (1) The manager of a restricted publications area must not permit a minor to enter that area.

Penalty: 10 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the minor was an adult.

78 Evidence

- (1) In any proceeding for an offence against this Act, a certificate, or a copy of a certificate, signed or purporting to be signed by the Director or Deputy Director and stating that—

- (a) a film or publication or computer game is classified as specified in the certificate and, if the case requires, the determined markings for that type of classification are as specified in the certificate; or

- (ab) a film or publication or computer game was, on a date specified in the certificate, classified as specified in the certificate and, if the case requires, the determined markings for that type of classification were as specified in the certificate; or

- (b) a classified film or a classified computer game specified in the certificate is modified in a manner specified in the certificate; or

- (c) a film or publication or computer game is not classified, or is not classified at a classification specified in the certificate; or

- (ca) a film or publication or computer game, on a date specified in the certificate, was not classified or was not classified at a classification specified in the certificate; or

S. 78
amended by
No. 6/2005
s. 9(1)(4)(5)
(LA s. 39B(1)).

S. 78(ab)
inserted by
No. 6/2005
s. 9(2).

S. 78(ca)
inserted by
No. 6/2005
s. 9(3).

(d) an advertisement described in the certificate is approved or has been refused approval or has not been approved—

is evidence of, and in the absence of evidence to the contrary is proof of, the matters stated in it.

(2) A certificate referred to in subsection (1) in respect of a film, publication, computer game or advertisement applies to each copy of the film, publication, computer game or advertisement the particulars of which correlate with the particulars in the certificate.

S. 78(2)
inserted by
No. 6/2005
s. 9(5).

79 Commencement of prosecution for an offence

- (1) A prosecution for an offence against this Act in relation to a film, publication or computer game that is unclassified at the time of the alleged offence—
- (a) must not be commenced until the film, publication or computer game has been classified; and
 - (b) unless the contrary intention appears, may be commenced not later than 12 months after the date on which the film, publication or computer game was classified.
- (2) Subsection (1)(a) does not apply if a person has been apprehended in accordance with section 458 of the **Crimes Act 1958**.

80 Proceeding against body corporate

- (1) 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.

(2) 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.

(3) Unless the contrary intention appears, if a body corporate is found guilty of an offence against this Act, the court may impose a fine not exceeding 5 times the maximum amount which the court could otherwise impose in respect of the offence.

S. 80(3)
amended by
No. 60/1998
s. 14(a)(b).

81 Employees and agents

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

(a) an employee or agent of the person had that state of mind; and

(b) the employee or agent engaged in the conduct within the scope of his or her actual or apparent authority.

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

82 Costs

If a person is charged with an offence against this Act and the court is satisfied that the person committed the offence, the court may order the person to pay by way of costs, in addition to any other costs, the amount of any fee incurred by the prosecution for classification or the provision of any certificate by the Director or Deputy Director.

83 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 classified RC, X 18+, R 18+ or MA 15+; or
- (b) a computer game classified RC or MA 15+; or
- (c) a publication classified Category 1 restricted, Category 2 restricted or RC; or
- (d) a submittable publication.

S. 83(a)
amended by
No. 6/2005
s. 7(j)(i)–(iii).

S. 83(b)
amended by
No. 6/2005
s. 7(j)(iv).

84 Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

**PART 11—REPEALS, CONSEQUENTIAL AMENDMENTS
AND TRANSITIONAL PROVISIONS**

85 Repeal

The **Classification of Films and Publications Act 1990** is repealed.

86 Consequential amendment

In section 60B(2)(a)(iv) of the **Crimes Act 1958**, for "section 60A of the **Classification of Films and Publications Act 1990**" substitute "section 70".

87 Transitional and saving provisions

(1) In this section—

former Act means **Classification of Films and Publications Act 1990**;

Ordinance means Classification of Publications Ordinance 1983 of the Australian Capital Territory.

- (2) A film which is classified as a "G", "PG", "M", "MA" or "R" film or has been refused classification under the former Act before the commencement of this section is deemed to have been classified G, PG, M, MA or R or RC respectively under the Commonwealth Act.
- (3) A film which is classified as an "X" film under the Ordinance before the commencement of this section is deemed to have been classified X under the Commonwealth Act.
- (4) An advertisement relating to a film which has been approved or refused approval under the former Act before the commencement of this section is deemed to have been approved or refused approval, as the case may be, under the Commonwealth Act.
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- (5) A publication which has been classified as an unrestricted publication or a Category 1 restricted publication or a Category 2 restricted publication or has been refused classification under the Ordinance before the commencement of this section is deemed to have been classified Unrestricted, Category 1 restricted or Category 2 restricted or RC respectively under the Commonwealth Act.
- (6) A computer game which has been classified under the Ordinance with a classification specified in column 1 of an item in the Table before the commencement of this section is deemed to have been classified under the Commonwealth Act with a classification specified opposite it in column 2 of that item.

TABLE

<i>Item</i>	<i>Column 1 Ordinance</i>	<i>Column 2 Commonwealth Act</i>
1	"G"	G
2	"G (8+)"	G (8+)
3	"M (15+)"	M (15+)
4	"MA (15+)"	MA (15+)

- (7) A computer game which has been refused, or is taken to have been refused, classification under the Ordinance before the commencement of this section is deemed to have been classified RC under the Commonwealth Act.
- (8) Nothing in this Act (except section 61) applies to or in relation to a computer game published before the date of commencement of this section unless the computer game has been classified or refused classification.

- (9) Advertising matter in relation to a computer game which has been approved or refused approval under the Ordinance before the commencement of this section is deemed to have been approved or refused approval under the Commonwealth Act.
- (10) If on the commencement of this section an application for classification or approval under the former Act has been made but not determined, the application is deemed to have been made under the Commonwealth Act.
- (11) If an application for review under the former Act has been made but not determined, the former Act continues to apply until the determination of the application, including any further review of a previous decision.
- (12) If a certificate of exemption in respect of an unclassified film has been granted under section 29A of the former Act and is in force, the certificate is deemed to have been granted under section 33 of the Commonwealth Act.

S. 87A
inserted by
No. 60/1998
s. 15.

87A Transitional provisions (1998 amendments)

- (1) The amendment of section 75 made by a provision of section 12 of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 1998** applies to a publication, film or computer game seized before or after the commencement of that provision.
- (2) An amendment of this Act made by any other provision of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 1998** applies to a publication, film or computer game seized after the commencement of that provision.

87B Transitional provisions (2001 amendments)

- (1) Section 57A, as inserted by section 16 of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2001**, applies only to a use of an on-line information service on or after the commencement of section 16 of that Act.
- (2) Section 40(3A) and (3B), as inserted by section 11(1) of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2001**, applies to a computer game whether published before or after the commencement of section 11(1) of that Act.
- (3) Sections 62A and 62B, as inserted by section 15 of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2001**, apply to a publication, film or computer game whether published before or after the commencement of section 15 of that Act.
- (4) An amendment of this Act made by any other provision of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2001** only applies to—
 - (a) a publication, film or computer game first published on or after the commencement of that provision; or
 - (b) a publication, film or computer game for which an application for classification is made on or after that commencement.

S. 87B
inserted by
No. 69/2001
s. 17,
amended by
No. 69/2001
s. 18 (ILA
s. 39B(1)).

S. 87B(2)
inserted by
No. 69/2001
s. 18.

S. 87B(3)
inserted by
No. 69/2001
s. 18.

S. 87B(4)
inserted by
No. 69/2001
s. 18.

s. 87C

S. 87C
inserted by
No. 6/2005
s. 11.

87C Definition (2005 amendments)

In sections 87D and 87E, *equivalent former classification* in relation to a classification specified in column 1 of the following table—

- (a) in the case of a film, means the former classification specified opposite it in column 2 of the table; and
- (b) in the case of a computer game, means the former classification specified opposite it in column 3 of the table.

TABLE

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
New classification	Former classification for films	Former classification for computer games
PG		G (8+)
M		M (15+)
MA 15+	MA	MA (15+)
R 18+	R	
X 18+	X	

S. 87D
inserted by
No. 6/2005
s. 11.

87D Films and computer games classified before 2005 amendments

- (1) An amendment of this Act made by sections 4, 5, 6, 7 and 13 of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2005** extends to a film or computer game classified before the commencement of the amendment.
- (2) For that purpose, a reference in this Act to a classification of a film or computer game, in relation to an offence against this Act that is alleged to have been committed on or after the commencement of sections 4, 5, 6, 7 and 13 of the

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

(Amendment) Act 2005, is a reference to the classification that the film or computer game has or is taken to have under the Commonwealth Act on or after the commencement of Schedule 1 to the Classification (Publications, Films and Computer Games) Amendment Act 2004 of the Commonwealth.

- (3) If a film or computer game was classified before the commencement of Schedule 1 to the Classification (Publications, Films and Computer Games) Amendment Act 2004 of the Commonwealth—
- (a) a person does not commit an offence against section 18(3) or 40(3) of this Act by selling the film or computer game in a container, wrapping or casing that displays a marking indicating the equivalent former classification of the film or computer game; and
 - (b) a person does not commit an offence against section 53(2) of this Act by publishing an advertisement for the film or computer game that indicates the equivalent former classification of the film or computer game.

87E Offences committed before 2005 amendments

- (1) This section applies to offences against this Act alleged to have been committed before the commencement of sections 4, 5, 6, 7 and 13 of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2005**.

S. 87E
inserted by
No. 6/2005
s. 11.

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- (2) Any proceeding for an offence referred to in subsection (1) is to be dealt with as if sections 4, 5, 6, 7 and 13 of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2005** had not been enacted, except as otherwise provided by this section.
- (3) For the purposes of any proceeding for an offence referred to in subsection (1), a reference in this Act to a classification of a film or computer game is a reference to the classification that had effect under the Commonwealth Act before the commencement of Schedule 1 to the Classification (Publications, Films and Computer Games) Amendment Act 2004 of the Commonwealth.
- (4) If an offence referred to in subsection (1) is alleged to have been committed in relation to an unclassified film or unclassified computer game that is subsequently classified on or after the commencement of Schedule 1 to the Classification (Publications, Films and Computer Games) Amendment Act 2004 of the Commonwealth, in any proceeding for the offence—
- (a) the film or computer game is taken to have been classified with the equivalent former classification; and
 - (b) evidence or proof that the film or computer game is classified at a specified classification is taken to be evidence or proof of the equivalent former classification.

87F Other transitional provisions (2005 amendments)

- (1) Section 75A as amended by section 8 of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2005** applies to films, publications and computer games seized on or after the commencement of section 8 of that Act.
 - (2) Section 78 as amended by section 9 of the **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2005** applies to any certificate issued on or after the commencement of section 9 of that Act.
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S. 87F
inserted by
No. 6/2005
s. 11.

PART 12—AMENDMENT OF THE CRIMES ACT

88 Insertion of new Subdivision 13

In Division 1 of Part I of the **Crimes Act 1958**
after section 67 **insert—**

"(13) Child Pornography

67A Definitions

In this Subdivision—

child pornography means a film,
photograph, publication or computer
game that describes or depicts a person
who is, or looks like, a minor under 16
engaging in sexual activity or depicted
in an indecent sexual manner or
context;

classified means classified under the
Commonwealth Act;

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

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

film has the same meaning as in the
Commonwealth Act;

law enforcement agency means—

- (a) the police force of Victoria or of
any other State or of the Northern
Territory of Australia; or
- (b) the Australian Federal Police; or

No. 6231.
Reprinted to
No. 43/1994
and S.R. No.
75/1987 and
subsequently
amended by
Nos 95/1994,
102/1994,
109/1994 and
48/1995.

-
- (c) the National Crime Authority established by the National Crime Authority Act 1984 of the Commonwealth; or
 - (d) any other authority or person responsible for the enforcement of the laws of—
 - (i) Victoria or any other State; or
 - (ii) the Commonwealth; or
 - (iii) the Northern Territory of Australia;

minor means a person under the age of 18 years;

photograph includes a photocopy or other reproduction of a photograph;

publication has the same meaning as in the Commonwealth Act.

68 Production of child pornography

A person who prints or otherwise makes or produces child pornography is guilty of a summary offence punishable on conviction by level 9 imprisonment.

69 Procurement of minor for child pornography

A person who—

- (a) invites a minor to be in any way concerned in the making or production of child pornography; or

- (b) procures a minor for the purpose of making or producing child pornography—

is guilty of an indictable offence punishable on conviction by level 7 imprisonment.

70 Possession of child pornography

- (1) A person who knowingly possesses child pornography is guilty of a summary offence punishable on conviction by level 10 imprisonment.
- (2) It is a defence to a prosecution for an offence against subsection (1) to prove—
- (a) in the case of—
- (i) a film; or
 - (ii) a photograph contained in a publication; or
 - (iii) a computer game—
- that at the time of the alleged offence the film, publication or computer game was classified other than RC or X; or
- (b) that the film, photograph, publication or computer game possesses artistic merit or is for a genuine medical, legal, scientific or educational purpose; or
- (c) that the defendant believed on reasonable grounds that the minor was aged 16 years or older or that he or she was married to the minor; or
- (d) that the defendant made the film or took the photograph or was given the film or photograph by the minor and that, at the time of making, taking or being given the film or photograph, the defendant was not more than 2 years

older than the minor was or appeared to be; or

- (e) that the minor or one of the minors depicted in the film or photograph is the defendant.
 - (3) Despite subsection (2)(b), the defence of artistic merit cannot be relied on in a case where the prosecution proves that the minor was actually under the age of 16 years.
 - (4) Nothing in this section makes it an offence for any member or officer of a law enforcement agency to have child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on him or her by or under this or any other Act or at common law."
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Sch.

SCHEDULE

Section 76(4)

RESTRICTED PUBLICATIONS AREA

**PERSONS UNDER 18 YEARS OF AGE
MAY NOT ENTER**

**THE PUBLIC IS WARNED THAT SOME
MATERIAL DISPLAYED IN THIS
AREA MAY CAUSE OFFENCE.**

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 1 November 1995

Legislative Council: 16 November 1995

The long title for the Bill for this Act was "A Bill to provide for the enforcement of a scheme of classification of publications, films and computer games and for other purposes."

The **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** was assented to on 5 December 1995 and came into operation as follows:

Sections 1 to 5 on 5 December 1995: section 2(1);

Rest of Act on 1 January 1996: Government Gazette 21 December 1995 page 3570.

Classification (Publications, Films and Computer Games) (Enforcement) Act
1995
No. 90 of 1995

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** by Acts and subordinate instruments.

Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 1998, No. 60/1998

Assent Date: 27.10.98
Commencement Date: Ss 4–15 on 1.1.99: s. 2(2)
Current State: This information relates only to the provision/s amending the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**

Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2001, No. 69/2001

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Commencement Date: Ss 16, 17 on 8.11.01: s. 2(1); ss 4–15, 18 on 23.3.02: s. 2(3)
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Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2005, No. 6/2005

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Justice Legislation (Further Amendment) Act 2006, No. 79/2006

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3. Explanatory Details

No entries at date of publication.

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