

# NORTHERN TERRITORY OF AUSTRALIA

## CLASSIFICATION OF PUBLICATIONS, FILMS AND COMPUTER GAMES ACT

As in force at 1 January 2013

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 1 January 2013. Any amendments that commence after that date are not included.

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## CLASSIFICATION OF PUBLICATIONS, FILMS AND COMPUTER GAMES ACT

An Act to provide for the classification of publications including films for public release and video tapes or video discs and for other purposes

### Part 1 Preliminary matters

#### 1 Short title

This Act may be cited as the *Classification of Publications, Films and Computer Games Act*.

#### 2 Commencement

The several Parts or sections of this Act shall come into operation on such dates as are respectively fixed by the Administrator by notice in the *Gazette*.

#### 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.

***advertisement***, see section 5 the Commonwealth Act.

***Advertising Scheme*** means the scheme determined from time to time under section 31(1) of the Commonwealth Act.

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

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

***business day*** means a day other than a Saturday or a Sunday or other public holiday under the *Public Holidays Act*.

**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.

**Chairperson** means the Chairperson of the Territory Board and, in relation to a meeting of the Board, includes the Deputy Chairperson or other member while presiding at the meeting.

**child** means a person under 18 years of age.

**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.

**Commonwealth Act** means the *Classification (Publications, Films and Computer Games) Act 1995* (Cth).

**computer game**, see section 5A of the Commonwealth Act.

**consumer advice** means consumer advice determined under section 20 of the Commonwealth Act for the film or game.

**contentious material**, see section 5 of the Commonwealth Act.

**Convenor** means the Convenor of the Review Board appointed under the Commonwealth Act.

**court** means the Court of Summary Jurisdiction.

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

**Deputy Director** means the Deputy Director of the National Board.

**determined markings** means markings determined under section 8 of the Commonwealth Act.

**exempt computer game**, see section 5 of the Commonwealth Act.

**exempt film**, see section 5 of the Commonwealth Act.

**exhibit**, for a film, means project, screen or play.

**film**, see section 5 of the Commonwealth Act.

**guardian** means an adult who is exercising parental control over a minor who has not attained the age of 15 years.

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

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

***manager***, for a restricted publications area, see section 104(5).

***member*** means a member of the Territory Board and includes the Chairperson and a person appointed under section 12(1) to act as a member while the person is so acting.

***National Board*** means the Classification Board established by the Commonwealth Act.

***National Director*** means Director of the National Board.

***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).

***possession***, of an item, includes:

- (a) having control over the item; and
- (b) having joint possession of the item.

***prescribed business*** means a business prescribed by regulation.

***prescribed fee*** means a fee prescribed by regulation.

***prescribed person*** means a person prescribed by regulation.

***private place*** means a place other than a public place.

***publication***, see section 5 of the Commonwealth Act.

***public place*** means a place the public is entitled to use or that is open to or used by the public, whether on payment of money or otherwise.

***publish***, see section 5 of the Commonwealth Act.

***restricted publications area***, see section 104(1).

***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.

**submittable publication** means:

- (a) a submittable publication as defined in section 5 of the Commonwealth Act; or
- (b) a publication called in by the National Director under section 90.

**Territory Board** means the Publications and Film Review Board established by section 7.

### **3A Exhibition of film**

For 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.

### **3B Films consisting only of classified films**

- (1) This section applies to a film:
  - (a) contained on 1 device; and
  - (b) consisting only of 2 or more classified films.
- (2) Despite any other provision of this Act, the film is to be treated, for this Act, as if each of the classified films were on a separate device.

## **4 Application**

This Act does not apply to:

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

**4AA Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 4AA*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

**Part 2 Administration****4A Delegations**

The Minister may, in writing, delegate any of the Minister's powers and functions under this Act, other than this power of delegation:

- (a) to a named person, body corporate or statutory body; or
- (b) to the person, from time to time or for the time being, holding, acting in or performing the duties of a named office, designation or position.

**7 Establishment of publications and Films Review Board**

There is established by this Act a Board by the name of the Publications and Films Review Board.

**8 Composition of Board and appointment of members**

- (1) The Board consists of 5 members of whom at least:
  - (a) one is a woman; and
  - (b) one is a man; and
  - (c) one is a lawyer; and
  - (d) one has qualifications, satisfactory to the Minister, in literature, art or education.
- (2) The Minister may, by *Gazette* notice, appoint a person to be a member.
- (4) The exercise of a power or the performance of a function of the Board is not affected by reason only of there being a vacancy or vacancies in the membership of the Board.

**9 Chairperson**

- (1) The Minister must appoint a member to be the Chairperson and another member to be the Deputy Chairperson of the Board.
- (2) The Chairperson or, in the Chairperson's absence the Deputy Chairperson, must preside at meetings of the Board at which he or she is present.
- (3) In the absence of the Chairperson and Deputy Chairperson, the members present at a meeting of the Board must elect one of their number to be the acting Chairperson, and that person may exercise the powers and perform the duties of the Chairperson for that meeting.
- (4) If the person holding office as Chairperson or Deputy Chairperson ceases to be a member, he or she must cease to be the Chairperson or Deputy Chairperson.

**10 Resignation of members**

A member may resign his or her office by writing signed by the member and delivered to the Minister.

**11 Dismissal of members**

Without limiting the Minister's general power to terminate the appointment of a member, the Minister must terminate the appointment of a member if the member:

- (a) is absent, except on leave granted by the Board, from 3 consecutive meetings of the Board; or
- (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds which his or her creditors or makes an assignment of his or her remuneration for the benefit of his or her creditors.

**12 Acting appointment**

- (1) Where a member is or is expected to be absent from duty or from the Territory, the Minister may appoint a person to act as a member during the absence.
- (2) The Minister may at any time terminate an appointment made under subsection (1).

- (3) The validity of a decision of the Board cannot be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment under this section had ceased to have effect.

### **13 Disclosure of interest**

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which the member is not a director, must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the Board, and the member:
- (a) must not, while he or she has that interest, take part after the disclosure in any deliberation or decision of the Board; and
  - (b) must be disregarded for the purpose of constituting a quorum of the Board;

in relation to that matter.

### **14 Protection of members**

An action or proceeding, civil or criminal, does not lie against a member for or in respect of any act or thing done in good faith by the member in his or her capacity as a member.

### **15 Meetings of Board**

- (1) The Chairperson must call such meetings of the Board as are necessary for the exercise of its powers and the performance of its function.
- (2) The Minister, may at any time, direct the Chairperson to convene a meeting of the Board and the Chairperson must convene a meeting in accordance with that direction.
- (3) At a meeting of the Board:
- (a) 3 members constitute a quorum; and

- (b) questions arising must be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the person presiding at the meeting, in addition to his or her deliberative vote, has a casting vote; and
  - (c) subject to this Act, the Board must determine the procedure to be followed at or in connection with the meeting.
- (4) The Board must keep records of its meetings.

## **16 Functions and powers of Territory Board**

- (1) In relation to any matter not subject to an arrangement between the Territory and the Commonwealth mentioned in section 4 of the Commonwealth Act, the Territory Board has, in the Territory, the same powers and functions as the National Board and the Commonwealth Act, with the necessary changes, applies to and in relation to such a matter as if:
- (a) the Commonwealth Act were a law of the Territory; and
  - (b) the Minister were the Commonwealth Minister; and
  - (c) the Territory Board were the National Board; and
  - (d) the Gazette were the Commonwealth of Australia Gazette; and
  - (e) the holders from time to time of the respective designations declared under subsection (2) were the National Director and the Deputy Director.
- (2) The Minister may, by *Gazette* notice, declare designations in an Agency or Agencies for subsection (1)(e).

## **17 Reports**

- (1) The Board may at any time report to the Minister on a matter connected with this Act.
- (2) The Board must, when required to do so by the Minister, report as soon as practicable:
- (a) on a matter connected with this Act; or
  - (b) on the operation of this Act during a period of 12 months ending with 31 December.

- (3) A report mentioned in subsection (1) or (2) must be tabled in the Legislative Assembly by the Minister within 3 sitting days of the Assembly after it has been received by the Minister.

### **Part 3                    Arrangements with Commonwealth**

#### **25            Arrangements with Commonwealth for censoring films**

- (1) The Minister may make such arrangements as the Minister thinks fit with the Commonwealth relating to the classification of publications, films and computer games.
- (2) An arrangement under this section may make provision for all or any matters necessary or convenient to be provided for or incidental to carrying out the arrangement.
- (3) The Minister must cause notice of the making of an arrangement under this section to be published in the *Gazette*.
- (4) Despite anything to the contrary in this Act, an arrangement made under this section has effect according to its tenor, and in proceedings under this Act the production of a copy of the *Gazette* notice mentioned in subsection (3) is prima facie evidence that an arrangement has been made and is still operative.

### **Part 4                    Films**

#### **Division 1            Exhibition of films**

#### **35            Exhibition of films in public place**

- (1) A person must not exhibit an unclassified film in a public place.

Fault elements:

- (a) intentionally exhibiting the film; and
- (b) knowledge that, or recklessness as to whether, the film is unclassified.

Maximum penalty:        200 penalty units or imprisonment for 2 years.

- (2) A person must not exhibit a classified film in a public place:

- (a) with a title other than the title under which the film is classified;  
or

- (b) in a form other than the form in which the film is classified.

Fault elements:

- (a) intentionally exhibiting the film; and  
(b) knowledge that, or recklessness as to whether, the film is exhibited in contravention of paragraph (a) or (b).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) Subsection (2) does not apply to the exhibition of a classified film:
- (a) under a title other than the title under which it is classified if it is contained on 1 device together with another classified film or films and no unclassified films; or  
(b) with modifications mentioned in section 21(2) of the Commonwealth Act.

### **36 Display of notice about classifications**

A person must not exhibit a film in a public place unless the person displays a notice:

- (a) in the approved form about classifications for films; and  
(b) in the place so the notice is clearly visible to the public.

Fault element: Strict liability offence.

Maximum penalty: 20 penalty units.

### **37 Exhibition of RC and X 18+ films**

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

Fault elements:

- (a) intentionally exhibiting the film; and  
(b) knowledge that, or recklessness as to whether, the film is classified RC.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) A person must not exhibit a film classified X 18+ in a public place that is not a restricted publications area.

Fault elements:

- (a) intentionally exhibiting the film; and
- (b) knowledge that the place is not a restricted publications area or recklessness as to that fact; and
- (c) knowledge that, or recklessness as to whether, the film is classified X 18+.

Maximum penalty:     200 penalty units or imprisonment for 2 years.

### **38         Exhibition of unclassified, RC and X 18+ films**

- (1) A person must not exhibit a film so that it can be seen from a public place if the film is:

- (a) classified RC or X 18+; or
- (b) unclassified but would, if classified, be classified RC or X 18+.

Fault elements:

- (a) intentionally exhibiting the film; and
- (b) knowledge that, or recklessness as to whether, the film can be seen from a public place; and
- (c) knowledge that, or recklessness as to whether, the film is classified RC or X 18+ or unclassified.

Maximum penalty:     200 penalty units or imprisonment for 2 years.

- (2) If the film is unclassified, absolute liability applies to the circumstance that the film would, if classified, be classified RC or X 18+.

### **39         Exhibition of R 18+ and MA 15+ films**

- (1) The Minister may prohibit the exhibition of a film classified R 18+ or MA 15+:

- (a) in a drive-in theatre; or



(b) in any other public place if, in the Minister's opinion, it is possible to see a film from an ordinary vantage point outside the place when it is exhibited in the place.

(2) The prohibition may:

(a) relate to a specified film or class of films and to drive-in theatres generally or a specified drive-in theatre or other place; and

(b) be imposed, varied or revoked by *Gazette* notice or by written notice given to the person who exhibits films in the theatre or place to which the notice relates.

(3) A person must not exhibit a film in contravention of the notice.

Fault element:            Intentionally exhibiting the film.

Maximum penalty:        For a film classified R 18+:  
  
200 penalty units or imprisonment for  
2 years.

For a film classified MA 15+:  
  
100 penalty units or imprisonment for  
12 months.

#### **40            Attendance of child at certain films – offence by parents and guardians**

(1) A parent or guardian of a child must not permit the child to attend the exhibition of a film in a public place if the film is:

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

(b) unclassified but would, if classified, be classified RC, X 18+ or R 18+.

Fault elements:

(a) intentionally permitting the child to attend the exhibition; and

(b) knowledge that the film is classified RC, X 18+ or R 18+ or unclassified.

Maximum penalty:        50 penalty units.

(2) If the film is unclassified, absolute liability applies to the circumstance that the film would, if classified, be classified RC, X 18+ or R 18+.

**41            Attendance of child at certain films – offence by child**

A child who is at least 15 years of age must not attend the exhibition of a film classified RC, X 18+ or R 18+ in a public place.

Fault elements:

- (a) intentionally attending the exhibition; and
- (b) knowledge that the film is classified RC, X 18+ or R 18+.

Maximum penalty:     50 penalty units.

**42            Private exhibition of certain films in presence of child**

(1) A person must not exhibit a film in a private place if:

- (a) the film is:
  - (i) classified RC, X 18+ or R 18+; or
  - (ii) unclassified but would, if classified, be classified RC, X 18+ or R 18+; and
- (b) a child is present during any part of the exhibition.

Fault elements:

- (a) intentionally exhibiting the film; and
- (b) knowledge that, or recklessness as to whether, the film is classified RC, X 18+ or R 18+ or unclassified.

Maximum penalty:     100 penalty units or imprisonment for  
   12 months.

(2) Absolute liability applies to:

- (a) if the film is unclassified – the circumstance that the film would, if classified, be classified RC, X 18+ or R 18+; and
- (b) the circumstance that the person present is a child.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant believed, on reasonable grounds, that the child was an adult.

**43            Attendance of child at R 18+ films – offence by exhibitor**

- (1) A person must not exhibit a film in a public place if:
- (a) the film is classified R 18+; and
  - (b) a child is present during any part of the exhibition.
- Fault element:            Intentionally exhibiting the film.
- Maximum penalty:        50 penalty units.
- (2) Absolute liability applies to the circumstance that the person present is a child.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:
- (a) the child produced to the defendant acceptable proof of age before the child was admitted to the public place; and
  - (b) the defendant believed, on reasonable grounds, that the child was an adult.

**44            Attendance of child at MA 15+ films – offence by exhibitor**

- (1) A person must not exhibit a film in a public place if:
- (a) the film is classified MA 15+; and
  - (b) a child under 15 years of age is present during any part of the exhibition; and
  - (c) the child is not accompanied by a parent or guardian of the child.
- Fault elements:
- (a) intentionally exhibiting the film; and
  - (b) knowledge that the child is not accompanied by a parent or guardian or recklessness as to that fact.
- Maximum penalty:        20 penalty units.
- (2) For subsection (1), a child is accompanied by a parent or guardian despite the temporary absence of the parent or guardian from the exhibition of the film.
- (3) Absolute liability applies to the circumstance that the person present is under 15 years of age.

- (4) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:
- (a) the defendant took all reasonable steps to ensure the child was not present in contravention of the subsection; or
  - (b) the defendant believed, on reasonable grounds, that the child was at least 15 years of age; or
  - (c) the defendant believed, on reasonable grounds, that the person accompanying the child was a parent or guardian of the child.

## **Division 2        Sale of films**

### **45        Sale of films**

- (1) A person must not sell an unclassified film.

Fault elements:

- (a) intentionally selling the film; and
- (b) knowledge that, or recklessness as to whether, the film is unclassified.

Maximum penalty:    200 penalty units or imprisonment for 2 years.

- (2) A person must not sell a classified film:

- (a) with a title other than the title under which the film is classified;  
or
- (b) in a form other than the form in which the film is classified.

Fault elements:

- (a) intentionally selling the film; and
- (b) knowledge that, or recklessness as to whether, the film is sold in contravention of paragraph (a) or (b).

Maximum penalty:    200 penalty units or imprisonment for 2 years.

- (3) Subsection (2) does not apply to the sale of a classified film:
- (a) with a title other than the title under which it is classified if it is contained on 1 device together with another classified film or films and no unclassified films; or
  - (b) with modifications mentioned in section 21(2) of the Commonwealth Act.

**46            Display of notice about classifications**

A person must not sell a film at any premises unless the person displays a notice:

- (a) in the approved form about classifications for films; and
- (b) in the premises so the notice is clearly visible to the public.

Fault element:            Strict liability offence.

Maximum penalty:        20 penalty units.

**47            Film must display determined markings and consumer advice**

- (1) A person must not sell a film unless the container, wrapping or casing of the film displays:
- (a) the determined markings relevant to the film's classification; and
  - (b) if there is any current consumer advice for the film – the consumer advice.

Fault element:            Strict liability offence.

Maximum penalty:        50 penalty units.

- (2) A person must not sell an unclassified film in a container, wrapping or casing that displays a marking indicating or suggesting that the film has been classified.

Fault element:            Strict liability offence.

Maximum penalty:        50 penalty units.

- (3) A person must not sell a classified film in a container, wrapping or casing that displays a marking indicating or suggesting that the film is unclassified or has a different classification.

Fault element:            Strict liability offence.

Maximum penalty:        50 penalty units.

- (4) Subsection (5) applies if:
- (a) a film is reclassified under section 39 or 97A of the Commonwealth Act; or
  - (b) a film is reclassified by a decision of the Review Board under Part 5 of the Commonwealth Act; or
  - (c) the National Board revokes a classification or consumer advice for a film under section 22B(3) of the Commonwealth Act.
- (5) A person does not commit an offence against this section in relation to the film during the 30-day period after the decision to reclassify or revoke takes effect, if the film displays the determined markings and consumer advice applying to the film immediately before the reclassification or revocation.

**48            Possession of unclassified or RC films and other films at certain premises**

- (1) A person must not possess a film classified RC, or an unclassified film, at premises where classified films are sold.

Fault elements:

- (a) intentionally possessing the film; and
- (b) knowledge that, or recklessness as to whether, the film is classified RC or unclassified; and
- (c) knowledge that, or recklessness as to whether, classified films are sold at the premises.

Maximum penalty:        200 penalty units or imprisonment for 2 years.

- (2) An occupier of premises commits an offence if:
- (a) classified films are sold at the premises; and

- (b) another person possesses a film classified RC or an unclassified film at the premises.

Fault element:            Knowledge that, or recklessness as to whether, another person possesses a film classified RC or an unclassified film at the premises.

Maximum penalty:        200 penalty units or imprisonment for 2 years.

#### **49        Display of X 18+ films for sale**

- (1) A person must not display a film classified X 18+ for sale in a place that is not a restricted publications area.

Fault elements:

- (a) intentionally displaying the film for sale; and  
(b) knowledge that the place is not a restricted publications area or recklessness as to that fact; and  
(c) knowledge that, or recklessness as to whether, the film is classified X 18+.

Maximum penalty:        100 penalty units or imprisonment for 12 months.

- (2) A person must not sell a film classified X 18+ to another person who has not made a direct request for the film.

Fault elements:

- (a) intentionally selling the film; and  
(b) knowledge that the person has not made a direct request for the film or recklessness as to that fact; and  
(c) knowledge that, or recklessness as to whether, the film is classified X 18+.

Maximum penalty:        100 penalty units or imprisonment for 12 months.

- (3) A person must not sell a film classified X 18+ that is not contained in a package made of opaque material.

Fault elements:

- (a) intentionally selling the film; and







- (8) Subsection (6) does not apply if the person who sells or delivers the film to the child is a parent or guardian of the child.
- (9) It is a defence to a prosecution for an offence against subsection (6) if the defendant proves that the defendant believed, on reasonable grounds, that:
  - (a) the child was at least 15 years of age; or
  - (b) a parent or guardian of the child had consented to the sale or delivery.

### **Division 3            Miscellaneous matters**

#### **51            Power to demand particulars and expel persons**

- (1) A police officer or person exhibiting, selling or delivering films who suspects on reasonable grounds that the exhibition, sale or delivery of a film to another person is, or would be, in contravention of this Part, may direct the other person to state their name, age and address.
- (2) The other person must comply with the direction.  
  
Fault element:            Strict liability offence.  
  
Maximum penalty:        10 penalty units.
- (3) A police officer or person exhibiting, or about to exhibit, a film in a public place (including an employee or agent of that person) who suspects on reasonable grounds that another person's presence during the exhibition is, or would be, in contravention of this Part may:
  - (a) direct the other person to leave the place; and
  - (b) if the other person fails to comply with the direction – use reasonable force to remove the person from the place.
- (4) The other person must comply with the direction.  
  
Fault element:            Strict liability offence.  
  
Maximum penalty:        10 penalty units.

## **52            Leaving films in certain places**

- (1) A person must not leave a film in a public place or, without the occupier's permission, in a private place, if the film is:
- (a) classified RC, X 18+, R 18+ or MA 15+; or
  - (b) unclassified but would, if classified, be classified RC, X 18+, R 18+ or MA 15+.

Fault elements:

- (a) intentionally leaving the film in the place; and
- (b) if the film is left in a private place – knowledge that the occupier has not given permission to leave the film in the place or recklessness as to that fact; and
- (c) knowledge that, or recklessness as to whether, the film is classified RC, X 18+, R 18+ or MA 15+ or unclassified.

Maximum penalty:        For a film classified RC, X 18+ or R 18+, or an unclassified film that would, if classified, be classified RC, X 18+ or R 18+:

200 penalty units or imprisonment for 2 years.

For a film classified MA 15+, or an unclassified film that would, if classified, be classified MA 15+:

50 penalty units.

- (2) If the film is unclassified, absolute liability applies to the circumstance that the film would, if classified, be classified RC, X 18+, R 18+ or MA 15+.

## **53            Possession of films with intention to publish**

- (1) A person must not possess a film with the intention of publishing the film if the film is:
- (a) classified RC or X 18+; or
  - (b) unclassified but would, if classified, be classified RC or X 18+.

Fault elements:

- (a) intention to publish the film; and

- (b) knowledge that, or recklessness as to whether, the film is classified RC or X 18+ or unclassified.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) If the film is unclassified, absolute liability applies to the circumstance that the film would, if classified, be classified RC or X 18 +.
- (3) Subsection (1) does not apply to a person who possesses a film for classification or law enforcement purposes.
- (4) If a person possesses 10 or more copies of a film, it is presumed, unless the contrary is proved, that the person intended to publish the film.
- (5) In this section:

*publish* includes publish outside the Territory.

## **Part 5                      Publications**

### **54                      Sale or delivery of submittable or RC publications**

- (1) A person must not sell or deliver:
- (a) a submittable publication; or
- (b) a publication classified RC.

Fault elements:

- (a) intentionally selling or delivering the publication; and
- (b) knowledge that the publication is a submittable publication or classified RC.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply to a person who delivers a publication for classification or law enforcement purposes.
- (3) It is a defence to a prosecution for an offence against subsection (1) in relation to a submittable publication if the defendant proves that, since the offence was alleged to have been committed, the publication has been classified Unrestricted.

**55 Sale or delivery of Category 1 restricted publications**

- (1) A person must not sell or deliver a publication classified Category 1 restricted unless:
- (a) the publication is contained in a sealed package made of plain opaque material; and
  - (b) both the publication and the package bear the determined markings relevant to the publication's classification.

Fault elements:

- (a) intentionally selling or delivering the publication; and
- (b) knowledge that, or recklessness as to whether, the publication is classified Category 1 restricted.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Subject to any condition imposed by the National Board under section 13A of the Commonwealth Act, the requirement that the package must be sealed does not apply if the sale or delivery takes place in a restricted publications area.
- (3) For subsection (1)(a), a package is plain even though it displays the title of the publication.
- (4) Subsection (5) applies if:
- (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; or
  - (b) a publication is reclassified by a decision of the Review Board under Part 5 of the Commonwealth Act; or
  - (c) the National Board revokes a classification for a publication under section 22B(3) of the Commonwealth Act.
- (5) A person does not commit an offence against subsection (1) in relation to the publication during the 30-day period after the decision to reclassify or revoke takes effect, if the publication displays the determined markings applying to the publication immediately before the reclassification or revocation.

**56 Sale or delivery of Category 2 restricted publications**

- (1) A person must not sell or deliver a publication classified Category 2 restricted in a place that is not a restricted publications area.

Fault elements:

- (a) intentionally selling or delivering the publication; and
- (b) knowledge that the place is not a restricted publications area or recklessness as to that fact; and
- (c) knowledge that, or recklessness as to whether, the publication is classified Category 2 restricted.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) A person must not deliver a publication classified Category 2 restricted to another person who has not made a direct request for the publication.

Fault elements:

- (a) intentionally delivering the publication to the person; and
- (b) knowledge that the person has not made a direct request for the publication or recklessness as to that fact; and
- (c) knowledge that, or recklessness as to whether, the publication is classified Category 2 restricted.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (3) A person must not deliver a publication classified Category 2 restricted unless:

- (a) the publication is contained in a sealed package made of plain opaque material; and
- (b) both the publication and the package bear the determined markings relevant to the publication's classification.

Fault elements:

- (a) intentionally selling or delivering the publication; and

- (b) knowledge that, or recklessness as to whether, the publication is classified Category 2 restricted.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (4) For subsection (3)(a), a package is plain even though it displays the title of the publication.
- (5) Subsection (6) applies if:
- (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; or
  - (b) a publication is reclassified by a decision of the Review Board under Part 5 of the Commonwealth Act; or
  - (c) the National Board revokes a classification or consumer advice for a publication under section 22B(3) of the Commonwealth Act.
- (6) A person does not commit an offence against subsection (3) in relation to the publication during the 30-day period after the decision to reclassify or revoke takes effect, if the publication displays the determined markings applying to the publication immediately before the reclassification or revocation.

## **57 Sale or delivery of publications contrary to conditions**

- (1) This section applies to a publication that is:
- (a) classified Unrestricted or Category 1 restricted; and
  - (b) subject to a condition imposed under section 13A of the Commonwealth Act.
- (2) A person must not sell the publication except in accordance with the condition.

Fault element: Intentionally selling the publication.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

**58 Consumer advice for unrestricted publications**

A person must not sell a publication classified Unrestricted for which there is consumer advice unless the consumer advice is displayed on the publication or packaging of the publication.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

**59 Misleading or deceptive markings**

- (1) A person must not sell an unclassified publication in a container, wrapping or casing that displays a marking indicating or suggesting that the publication has been classified.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

- (2) A person must not sell a classified publication in a container, wrapping or casing that displays a marking indicating or suggesting that the publication is unclassified or has a different classification.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

- (3) Subsection (4) applies if:

- (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; or
- (b) a publication is reclassified by a decision of the Review Board under Part 5 of the Commonwealth Act; or
- (c) the National Board revokes a classification for a publication under section 22B(3) of the Commonwealth Act.

- (4) A person does not commit an offence against this section in relation to the publication during the 30-day period after the decision to reclassify or revoke takes effect, if the publication displays the determined markings applying to the publication immediately before the reclassification or revocation.



**60 Sale of certain publications to a child**

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

Fault elements:

- (a) intentionally selling or delivering the publication; and
- (b) knowledge that, or recklessness as to whether, the publication is classified Category 1 restricted or Category 2 restricted.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Absolute liability applies to the circumstance that the person to whom the publication is sold or delivered is a child.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:
- (a) the child produced to the defendant acceptable proof of age before the defendant sold or delivered the publication to the child; and
  - (b) the defendant believed, on reasonable grounds, that the child was an adult.

**61 Leaving or display publications in certain places**

- (1) A person commits an offence if:
- (a) the person:
    - (i) leaves a publication in a public place; or
    - (ii) leaves a publication in a private place without the occupier's permission; or
    - (iii) displays a publication so that it can be seen from a public place; and
  - (b) the publication is:
    - (i) a submittable publication; or

- (ii) classified Category 1 restricted, Category 2 restricted or RC.

Fault elements:

- (a) intentionally leaving or displaying the publication; and
- (b) for paragraph (a)(ii) – knowledge that the occupier has not given permission to leave the publication in the place or recklessness as to that fact; and
- (c) for paragraph (a)(iii) – knowledge that, or recklessness as to whether, the publication can be seen from a public place; and
- (d) knowledge that the publication is:
  - (i) a submittable publication; or
  - (ii) classified Category 1 restricted, Category 2 restricted or RC.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply if the publication:
  - (a) is classified Category 1 restricted and both of the following apply:
    - (i) the public place is a shop or stall;
    - (ii) section 55 is complied with in relation to the publication; or
  - (b) is classified Category 2 restricted and the public place is a restricted publications area.
- (3) It is a defence to a prosecution for an offence against subsection (1) in relation to a submittable publication if the defendant proves that, since the offence was alleged to have been committed, the publication has been classified Unrestricted.

## **62 Possession or copying of publications with intention to sell**

- (1) A person must not possess or copy a publication with the intention of selling the publication if the publication is:
  - (a) a submittable publication; or

(b) classified RC.

Fault elements:

- (a) intention to sell the publication; and
- (b) knowledge that, or recklessness as to whether, the publication is a submittable publication or classified RC.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) It is a defence to a prosecution for an offence against subsection (1) in relation to a submittable publication if the defendant proves that, since the offence was alleged to have been committed, the publication has been classified Unrestricted, Category 1 restricted, or Category 2 restricted.
- (3) If a person makes 10 or more copies of a publication it is presumed, unless the contrary is proved, that the person intended to sell the publication.

## **Part 6 Computer games**

### **63 Sale or demonstration of unclassified computer games**

- (1) A person must not:
  - (a) sell an unclassified computer game; or
  - (b) demonstrate an unclassified computer game in a public place.

Fault elements:

- (a) intentionally selling or demonstrating the game; and
- (b) knowledge that, or recklessness as to whether, the game is unclassified.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) A person must not sell a classified computer game, or demonstrate a classified computer game in a public place:
  - (a) with a title other than the title under which the game is classified; or

- (b) in a form other than the form in which the game is classified.

Fault elements:

- (a) intentionally selling or demonstrating the game; and
- (b) knowledge that, or recklessness as to whether, the game is sold or demonstrated in contravention of paragraph (a) or (b).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

#### **64 Display of notice about classifications**

A person must not sell or demonstrate a computer game in a public place unless the person displays a notice:

- (a) in the approved form about classifications for computer games; and
- (b) in the place so the notice is clearly visible to the public.

Fault element: Strict liability offence.

Maximum penalty: 20 penalty units.

#### **65 Sale or demonstration of unclassified and RC computer games**

- (1) A person must not sell a computer game, or demonstrate a computer game in a public place, if the game is:

- (a) classified RC; or
- (b) unclassified but would, if classified, be classified RC.

Fault elements:

- (a) intentionally selling or demonstrating the game; and
- (b) knowledge that, or recklessness as to whether, the game is classified RC or unclassified.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) If the game is unclassified, absolute liability applies to the circumstance that the game would, if classified, be classified RC.

**65A Demonstration of R 18+ computer games**

A person must not demonstrate a computer game classified R 18+ in a public place unless:

- (a) the determined markings relevant to the game's classification are exhibited before the game can be played; and
- (b) entry into the place is restricted to adults.

Fault element:            Strict liability offence.

Maximum penalty:        100 penalty units.

**66 Demonstration of MA 15+ computer games**

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

- (a) the determined markings relevant to the game's classification are exhibited before the game can be played; and
- (b) entry into the place is restricted to adults or to children who are accompanied by a parent or guardian while in the public place.

Fault element:            Strict liability offence.

Maximum penalty:        20 penalty units.

**67 Demonstration of unclassified, RC, R 18+ and MA 15+ computer games**

A person must not demonstrate a computer game so that it can be seen from a public place if the game is:

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

Fault elements:

- (a) intentionally demonstrating the game; and
- (b) knowledge that, or recklessness as to whether, the game can be seen from a public place; and

- (c) knowledge that, or recklessness as to whether, the game is classified RC, R 18+ or MA 15+ or unclassified.

Maximum penalty: For a game classified RC, or an unclassified game that would, if classified, be classified RC:

100 penalty units or imprisonment for 12 months.

For a game classified R 18+, or an unclassified game that would, if classified, be classified R 18+:

100 penalty units.

For a game classified MA 15+, or an unclassified game that would, if classified, be classified MA 15+:

50 penalty units.

**68 Private demonstration of unclassified, RC or R 18+ computer games in presence of child**

- (1) A person must not demonstrate a computer game in a private place if:

- (a) the game is:
- (i) classified RC or R 18+; or
  - (ii) unclassified but would, if classified, be classified RC or R 18+; and
- (b) a child is present during any part of the demonstration.

Fault elements:

- (a) intentionally demonstrating the game; and
- (b) knowledge that, or recklessness as to whether, the game is classified RC or R 18+ or unclassified.

Maximum penalty: For a game classified RC, or an unclassified game that would, if classified, be classified RC:

100 penalty units or imprisonment for 12 months.

For a game classified R 18+, or an unclassified game that would, if classified, be classified R 18+:

100 penalty units.

- (2) Absolute liability applies to:
- (a) if the game is unclassified – the circumstance that the game would, if classified, be classified RC or R 18+; and
  - (b) the circumstance that the person present is a child.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant believed, on reasonable grounds, that the child was an adult.

**69 Computer game must display determined markings and consumer advice**

- (1) A person must not sell a computer game unless the container, wrapping or casing of the game displays:
- (a) the determined markings relevant to the game's classification; and
  - (b) if there is any current consumer advice for the game – the consumer advice.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

- (2) A person must not sell an unclassified computer game in a container, wrapping or casing that displays a marking indicating or suggesting that the game has been classified.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

- (3) A person must not sell a classified computer game in a container, wrapping or casing that displays a marking indicating or suggesting that the game is unclassified or has a different classification.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

- (4) A person must not make a computer game available for playing on a pay and play basis unless the device used for playing the game displays:
- (a) the determined markings relevant to the game's classification; and
  - (b) if there is any current consumer advice for the game – the consumer advice.

Fault element:            Strict liability offence.

Maximum penalty:        20 penalty units.

- (5) If 2 or more computer games are available for playing on a device mentioned in subsection (4), the determined markings and consumer advice that must be displayed on the device are those relevant to the computer game with the highest classification under the Commonwealth Act.
- (6) Subsection (7) applies if:
- (a) a game is reclassified under section 39 of the Commonwealth Act; or
  - (b) a game is reclassified by a decision of the Review Board under Part 5 of the Commonwealth Act; or
  - (c) the National Board revokes a classification or consumer advice for a game under section 22B(3) of the Commonwealth Act.
- (7) A person does not commit an offence against this section in relation to the game during the 30-day period after the decision to reclassify or revoke takes effect, if the game displays the determined markings and consumer advice applying to the game immediately before the reclassification or revocation.

## **70 Possession of unclassified or RC computer games with other computer games at certain premises**

A person must not possess a computer game classified RC, or an unclassified computer game, at premises where classified computer games are sold or demonstrated.

Fault elements:

- (a) intentionally possessing the game; and



- (b) knowledge that, or recklessness as to whether, the game is classified RC or unclassified; and
- (c) knowledge that, or recklessness as to whether, classified games are sold or demonstrated at the premises.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

## **71 Sale or delivery of certain computer games to child**

- (1) A person must not sell or deliver a computer game to a child if the game is:

- (a) classified RC or R 18+; or
- (b) unclassified but would, if classified, be classified RC or R 18+.

Fault elements:

- (a) intentionally selling or delivering the game; and
- (b) knowledge that, or recklessness as to whether, the game is classified RC or R 18+ or unclassified.

Maximum penalty: For a game classified RC, or an unclassified game that would, if classified, be classified RC:

200 penalty units or imprisonment for 2 years.

For a game classified R 18+, or an unclassified game that would, if classified, be classified R 18+:

100 penalty units.

- (2) Absolute liability applies to:

- (a) the circumstance that the person to whom the game is sold or delivered is a child; and
- (b) if the game is unclassified – the circumstance that the game would, if classified, be classified RC or R 18+.

- (2A) Subsection (1) does not apply if:

- (a) the game is classified R 18+, or is an unclassified game that would, if classified, be classified R 18+; and

- (b) the child is at least 15 years of age; and
  - (c) the person who sells or delivers the game to the child is a parent or guardian of the child.
- (2B) It is a defence to a prosecution for an offence against subsection (1), if the game is classified R 18+, or is an unclassified game that would, if classified, be classified R 18+, if the defendant proves that:
- (a) the defendant believed, on reasonable grounds, that the child was an adult; or
  - (b) if the offence relates to the delivery of the game, the child was employed by the defendant and the delivery took place in the course of employment.
- (2C) A child who is at least 15 years of age must not buy a computer game classified RC or R 18+.
- Fault element: Knowledge that the game is classified RC or R 18+.
- Maximum penalty: 50 penalty units.
- (3) A person must not sell or deliver a computer game classified MA 15+ to a child under 15 years of age.
- Fault elements:
- (a) intentionally selling or delivering the game; and
  - (b) knowledge that, or recklessness as to whether, the game is classified MA 15+.
- Maximum penalty: 50 penalty units.
- (4) Absolute liability applies to the circumstance that the person to whom the game is sold or delivered is under 15 years of age.
- (5) Subsection (3) does not apply if the person who sells or delivers the game to the child is a parent or guardian of the child.
- (6) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the defendant believed, on reasonable grounds, that:
- (a) the child was at least 15 years of age; or
  - (b) a parent or guardian of the child had consented to the sale or delivery.

**72 Power to demand particulars and expel persons**

(1) A police officer or person demonstrating, selling or delivering computer games who suspects on reasonable grounds that the demonstration, sale or delivery of a game to another person is, or would be, in contravention of this Part, may direct the other person to state their name, age and address.

(2) The other person must comply with the direction.

Fault element:            Strict liability offence.

Maximum penalty:        10 penalty units.

(3) A police officer or person demonstrating, or about to demonstrate, a computer game in a public place (including an employee or agent of that person) who suspects on reasonable grounds that another person's presence during the demonstration is, or would be, in contravention of this Part may:

(a) direct the other person to leave the place; and

(b) if the other person fails to comply with the direction – use reasonable force to remove the person from the place.

(4) The other person must comply with the direction.

Fault element:            Strict liability offence.

Maximum penalty:        10 penalty units.

**73 Leaving computer games in certain places**

(1) A person must not leave a computer game in a public place or, without the occupier's permission, in a private place, if the game is:

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

(b) unclassified but would, if classified, be classified RC, R 18+ or MA 15+.

Fault elements:

(a) intentionally leaving the game; and

(b) if the game is left in a private place – knowledge that the occupier has not given permission to leave the game in the place or recklessness as to that fact; and

- (c) knowledge that, or recklessness as to whether, the game is classified RC, R 18+ or MA 15+ or unclassified.

Maximum penalty: For a game classified RC, or an unclassified game that would, if classified, be classified RC:

200 penalty units or imprisonment for 2 years.

For a game classified R 18+, or an unclassified game that would, if classified, be classified R 18+:

100 penalty units.

For a game classified MA 15+, or an unclassified game that would, if classified, be classified MA 15+:

50 penalty units.

- (2) If the game is unclassified, absolute liability applies to the circumstance that the game would, if classified, be classified RC, R 18+ or MA 15+.

#### **74 Possession of computer games with intention to publish**

- (1) A person must not possess a computer game with the intention of publishing the game if the game is:

- (a) classified RC; or  
 (b) unclassified but would, if classified, be classified RC.

Fault elements:

- (a) intention to publish the game; and  
 (b) knowledge that, or recklessness as to whether, the game is classified RC or unclassified.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) If the game is unclassified, absolute liability applies to the circumstance that the game would, if classified, be classified RC.
- (3) Subsection (1) does not apply to a person who possesses a game for classification or law enforcement purposes.

(4) If a person makes 10 or more copies of a game, it is presumed, unless the contrary is proved, that the person intended to publish the game.

(5) In this section:

*publish* includes publish outside the Territory.

## Part 7 Computer services

### 75 Definitions

In this Division:

*code of practice* means a code of practice, as amended from time to time, approved and published under section 76.

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

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

*objectionable material* means:

- (a) a film classified RC, a computer game classified RC or a refused publication; or
- (b) child pornography; or
- (c) an article that promotes crime or violence, or incites or instructs in matters of crime or violence; or
- (d) an article that describes or depicts, in a manner that is likely to cause offence to a reasonable adult:
  - (i) the use of violence or coercion to compel a person to participate in, or submit to, sexual conduct; or
  - (ii) sexual conduct with or on the body of a dead person; or
  - (iii) the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct; or

- (iv) bestiality; or
- (v) acts of torture or the infliction of extreme violence or extreme cruelty.

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

## 76 Codes of practice

- (1) The Minister may approve a code of practice relating to computer services.
- (2) The Minister must cause a copy of a code of practice approved under subsection (1) to be published in the *Gazette*.
- (3) The Minister may approve an amendment of a code of practice and on publication in the *Gazette* of the approved amendment the code is taken to be amended accordingly.
- (4) The Minister may, by *Gazette* notice, revoke the approval of a code of practice.

## 77 Objectionable material

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

Fault elements:

- (a) intentionally transmitting, obtaining possession of, demonstrating, advertising or requesting the transmission of, the material; and
- (b) knowledge that the material is objectionable material.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the transmission, obtaining possession of, demonstrating, advertising or requesting the transmission of, the material is justified in the public interest because the material is part of:
- (a) an article of recognised literary, artistic or scientific merit; or
  - (b) a bona fide medical article.

## **78 Restricted material**

- (1) A person must not use a computer service to transmit or make restricted material available to a child.

Fault elements:

- (a) intentionally transmitting or making the material available; and
- (b) knowledge that, or recklessness as to whether, the material is restricted material; and
- (c) knowledge that, or recklessness as to whether, the recipient or intended recipient of the material is a child.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant:
- (a) complied with a code of practice; or
  - (b) took all reasonable steps to avoid a contravention of the subsection; or
  - (c) believed, on reasonable grounds, that:
    - (i) the person to whom the defendant transmitted the restricted material was not a child; or
    - (ii) the restricted material would not be made available to a child.

## **Part 8                    Control of advertising**

### **79                    Hierarchy of classification**

For this Part, the hierarchy of classification is as follows:

- (a) G is a lower classification than PG, M, MA 15+ or R 18+;
- (b) PG is a lower classification than M, MA 15+ or R 18+;
- (c) M is a lower classification than MA 15+ or R 18+;
- (d) MA 15+ is a lower classification than R 18+;
- (e) R 18+ is a lower classification than X 18+.

### **80                    Certain advertisements not to be published**

- (1) A person must not publish an advertisement for a film, publication or computer game if:
  - (a) the advertisement:
    - (i) has not been submitted for approval; or
    - (ii) has been refused approval; or
    - (iii) has been approved and the approval is revoked under section 13(5) or 21A of the Commonwealth Act; and
  - (b) for an advertisement, that has not been submitted for approval – the advertisement, if submitted, would be refused approval.

Fault elements:

- (a) intentionally publishing the advertisement; and
- (b) knowledge that, or recklessness as to whether, the advertisement:
  - (i) has not been submitted for approval; or
  - (ii) has been refused approval; or
  - (iii) has been approved and the approval is revoked under section 13(5) or 21A of the Commonwealth Act.

Maximum penalty:        50 penalty units.



- (2) If the advertisement has not been submitted for approval, absolute liability applies to the circumstance that, if submitted, the advertisement would be refused approval.
- (3) A person must not publish an approved advertisement for a film, publication or computer game:
  - (a) in a form other than the form in which it is approved; or
  - (b) otherwise than in accordance with a condition of the approval.

Fault elements:

- (a) intentionally publishing the advertisement; and
- (b) knowledge that, or recklessness as to whether, the advertisement is published in contravention of paragraph (a) or (b).

Maximum penalty: 50 penalty units.

**81 Certain films, publications and computer games not to be advertised**

- (1) A person must not publish an advertisement for:
  - (a) an unclassified film, if the advertisement is published otherwise than in accordance with the relevant provisions of the Advertising Scheme; or
  - (b) a film classified RC; or
  - (c) a submittable publication; or
  - (d) a publication classified RC; or
  - (e) an unclassified computer game, if the advertisement is published otherwise than in accordance with the relevant provisions of the Advertising Scheme; or
  - (f) a computer game classified RC.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

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

**82 Advertisements with films**

- (1) A person must not exhibit an advertisement for a classified film in a public place during a program for the exhibition of another classified film (the *feature film*) if the advertised film has a higher classification than the feature film.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

- (2) A person must not exhibit an advertisement for an unclassified film in a public place during a program for the exhibition of a classified film if the advertisement does not comply with the relevant provisions of the Advertising Scheme.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

- (3) A person must not sell a classified film (the *feature film*) that is accompanied by an advertisement for another classified film if the advertised film has a higher classification than the feature film.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

- (4) A person must not sell a classified film that is accompanied by an advertisement for an unclassified film if the advertisement does not comply with the relevant provisions of the Advertising Scheme.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

**83 Advertisements with computer games**

- (1) A person must not sell a classified computer game (the *main game*) that is accompanied by an advertisement for another classified computer game if the advertised game has a higher classification than the main game.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

- (2) A person must not sell a classified computer game that is accompanied by an advertisement for an unclassified computer game if the advertisement does not comply with the relevant provisions of the Advertising Scheme.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

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

An occupier of a public place that is not a restricted publications area must not screen in the place an advertisement for:

- (a) a film classified MA 15+ or R 18+ during a program for the exhibition of a film with a lower classification; or
- (b) a film classified X 18+.

Fault element: Strict liability offence.

Maximum penalty: 50 penalty units.

#### **85 Advertisements to contain determined markings and consumer advice**

- (1) A person must not publish an advertisement for a classified film, publication or computer game unless the determined markings relevant to the classification of the film, publication or game and relevant consumer advice are:

- (a) contained in the advertisement; and
- (b) displayed in the manner determined by the National Director under the Commonwealth Act; and
- (c) clearly visible, having regard to the size and nature of the advertisement.

Fault element: Strict liability offence.

Maximum penalty: 20 penalty units.

- (2) Subsection (3) applies if:
- (a) a film, publication or computer game is reclassified under section 39 or 97A of the Commonwealth Act; or
- (b) a film, publication or computer game is reclassified by a decision of the Review Board under Part 5 of the Commonwealth Act; or

- (c) the National Board revokes a classification or consumer advice for a film, publication or computer game under section 22B(3) of the Commonwealth Act.
- (3) A person does not commit an offence against subsection (1) in relation to the film, publication or computer game during the 30-day period after the decision to reclassify or revoke takes effect, if the film, publication or computer game displays the determined markings and consumer advice applying to the film, publication or computer game immediately before the reclassification or revocation.

## **86 Misleading or deceptive advertisements**

- (1) A person must not publish an advertisement for an unclassified film, publication or computer game if the advertisement displays a marking indicating or suggesting that the film, publication or computer game has been classified.

Fault element:            Strict liability offence.

Maximum penalty:      50 penalty units.

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

Fault element:            Strict liability offence.

Maximum penalty:      50 penalty units.

## **87 Advertisements for category 2 restricted publications**

- (1) A person must not publish an advertisement for a publication classified Category 2 restricted if the advertisement is published:

(a) in a publication that is not classified Category 2 restricted; or

(b) in a place that is not a restricted publications area.

Fault element:            Strict liability offence.

Maximum penalty:      50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the advertisement was published by way of printed or written material delivered to a person at the written request of the person.

- (3) An occupier of a place that is not a restricted publications area commits an offence if an advertisement for a publication classified Category 2 restricted is published in the place.

Fault element:            Strict liability offence.

Maximum penalty:        50 penalty units.

## **88        Advertisements and X 18+ films**

- (1) A person (the *first person*) commits an offence if:
- (a) an advertisement for a film classified R 18+ is published in a publication; and
  - (b) another person responds to the advertisement; and
  - (c) the first person sells a film classified X 18+ to the other person.

Fault elements:

- (a) intentionally selling the film; and
- (b) knowledge that, or recklessness as to whether, the film sold is classified X 18+.

Maximum penalty:        50 penalty units.

- (2) A person must not publish an advertisement for a film classified X 18+ if the advertisement explicitly depicts or describes sexual acts or fetishes.

Fault element:            Strict liability offence.

Maximum penalty:        50 penalty units.

- (3) For subsection (2), if a person publishes an advertisement at the request of another person, the other person alone is taken to have published it.
- (4) Subsection (2) does not apply if:
- (a) the advertisement is contained in a sealed package made of plain opaque material prominently displaying the words "WARNING: SEXUALLY EXPLICIT ADVERTISING", or words to that effect, on the outside of the package; and
  - (b) the package is contained in another sealed package made of plain opaque material.

**89 Classification symbols and determined markings to be published with advertisements**

A person commits an offence if:

- (a) the person publishes a publication containing an advertisement for:
  - (i) a film; or
  - (ii) a publication classified Category 1 restricted or Category 2 restricted; or
  - (iii) a computer game; and
- (b) the publication does not also contain a list of the classification symbols and determined markings for films, publications or computer games respectively.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

**Part 9 National Director's call in powers****90 Calling in submittable publications for classification**

- (1) If:
  - (a) the National Director has reasonable grounds to believe that a publication is a submittable publication; and
  - (b) the publication is being published in the Territory, or the National Director has reasonable grounds to believe that it will be published in the Territory;

the National 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 National Board.

- (2) The National Director must cause notice of a decision under subsection (1) to be published in the *Commonwealth of Australia 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.

Fault element:            Strict liability offence.

Maximum 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 the Territory; or  
(b) to cause, authorise, permit or license the publication to be published in the Territory.

## 91        **Calling in films for classification**

- (1) If:

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

the National 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 National Director must cause notice of a decision under subsection (1) to be published in the *Commonwealth of Australia 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.

Fault element:            Strict liability offence.

Maximum 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 the Territory; or  
(b) to cause, authorise, permit or license the film to be published in the Territory.

**92 Calling in computer games for classification**

(1) If:

- (a) the National 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 the Territory, or the National Director has reasonable grounds to believe that it will be published in the Territory;

the National 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 National 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 the Territory, or the National Director has reasonable grounds to believe that it will be published in the Territory;

the National 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 National Director must cause notice of a decision under subsection (1) or (1A) to be published in the *Commonwealth of Australia 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.

Fault element:            Strict liability offence.

Maximum 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 the Territory; or
  - (b) to cause, authorise, permit or license the computer game to be published in the Territory.



**93 Calling in advertisements**

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

require the publisher to submit to the National 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.

Fault element:            Strict liability offence.

Maximum 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 the Territory; or
  - (b) to cause, authorise, permit or license the publication, film or computer game to be published in the Territory.

**94 Calling in publications, films, computer games for reclassification**

- (1) If:
- (a) the National 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 the Territory or has an office in the Territory;

the National 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.

Fault element: Strict liability offence.

Maximum 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.

## **95 Obtaining copies for review**

- (1) If:

- (a) an application is made for a review of a classification decision under the Commonwealth Act by a person who is not the original applicant for classification of the publication, film or computer game concerned; and
- (b) the National 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 the Territory or has an office in the Territory;

Convenor 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.

Fault element: Strict liability offence.

Maximum 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 10 Exemptions**

### **96 Direction to exempt film, publication, computer game or advertisement**

- (1) The Minister or National Director may, on application, direct that this Act does not apply to a film, publication, computer game or advertisement.
- (2) The direction must:
  - (a) be in writing; and
  - (b) include reasons for it.

### **97 Regulations may exempt**

The Regulations may exempt any of the following from the application of this Act:

- (a) a person or organisation;
- (b) a film, publication, computer game or advertisement.

### **98 Direction to exempt approved organisation**

- (1) The Minister or National Director may, on application by an organisation approved under this Part, direct that this Act does not apply to the organisation in relation to:
  - (a) the exhibition of a film at an event; or
  - (b) the activities or functions of the organisation that relate to films or computer games.
- (2) The direction must:
  - (a) be in writing; and
  - (b) include reasons for it; and
  - (c) if made under subsection (1)(a) – specify the film and event.
- (3) An application for a direction must:
  - (a) be in writing; and
  - (b) be accompanied by the prescribed fee; and

- 
- (c) if made under subsection (1)(a):
    - (i) specify the film the organisation intends to exhibit and the event at which the film will be exhibited; and
    - (ii) be accompanied by a synopsis of the story or events depicted in the film; and
  - (d) if made under subsection (1)(b) – specify the extent of the exemption sought.

## 99 Ministerial directions or guidelines

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

## 100 Approval of organisation

- (1) The Minister or National Director may, on application by an organisation, approve the organisation for this Part.
- (2) In considering whether to approve an organisation, the Minister or National Director must have regard to:
  - (a) the purpose for which the organisation is 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:
    - (i) the screening of films; or
    - (ii) the possession or demonstration of computer games; and
  - (d) the conditions of admission of persons to:
    - (i) the screening of films by the organisation; or
    - (ii) the demonstration of computer games by the organisation.
- (3) The approval may be made by:
  - (a) the Minister, by *Gazette* notice; or
  - (b) the National Director, by notice in the Commonwealth Gazette.

- (4) The approval may be revoked by the person who gave it if, because of a change in any matter mentioned in subsection (2), the person considers that it is no longer appropriate that the organisation be approved.
- (5) The revocation takes effect on the date of the notice or on a later date specified in it.
- (6) The Minister or National Director must:
  - (a) give written notice to the organisation of a decision to:
    - (i) approve it; or
    - (ii) refuse to approve it; or
    - (iii) revoke its approval; and
  - (b) give the organisation written reasons for the decision.

## Part 11            Sexual articles

### 101            Definition

In this Part:

***sexual article*** means anything that is primarily concerned with, or is used or intended to be used in connection with, sexual behaviour, but does not include a publication.

### 102            Display of sexual articles

- (1) A person who conducts or is employed in a business involved in the sale or distribution of sexual articles must not:
  - (a) display a sexual article in a public place; or
  - (b) permit a sexual article to be displayed in a public place; or
  - (c) display a sexual article so that it can be seen from a public place.

Fault elements:

- (a) intentionally displaying the article or permitting the article to be displayed; and

- (b) for paragraph (c) – knowledge that, or recklessness as to whether, the article can be seen from a public place.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) that the display of the sexual article was only to a person who requested that the article be displayed to the person or consented to the display.
- (3) Subsection (1) does not apply to the display of a sexual article for the sole purpose of carrying on a prescribed business.

### 103 Advertising sexual articles

- (1) A person who conducts or is employed in a business involved in the sale or distribution of sexual articles must not advertise in any way the aspect of the business relating to sexual articles.

Fault element: Intentionally advertising the aspect of the business relating to sexual articles.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) that the aspect of the business relating to sexual articles was advertised only to a person who conducts or is employed in another business involving the sale or distribution of sexual articles.
- (3) Subsection (1) does not apply to advertising for the sole purpose of carrying on a prescribed business.

## Part 12 Restricted publications area

### 104 Restricted publications area – construction and management

- (1) A *restricted publications area* is an area constructed and managed in accordance with this section.
- (2) The area must be constructed so that no part of the interior of the area is visible to a person outside of the area.
- (3) Each entrance to the area must be:
- (a) fitted with a gate or door capable of excluding persons from the area; and

- (b) closed by way of the gate or door when the area is not open to the public.
- (4) A notice in the form in the Schedule, in legible letters not less than 15 mm in height and of a colour that contrasts with the background colour of the notice, must 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) The area must be managed by an adult (the *manager*) who is in attendance in or near the area at all times when the area is open to the public.

### 105 Restricted publications area – offences

- (1) A person must not employ a child in a restricted publications area.  

Fault element:	Recklessness in relation to the circumstance that the person employed is a child.
Maximum penalty:	100 penalty units or imprisonment for 12 months.
- (2) The manager of a restricted publications area must not allow a child to enter the area.  

Fault element:	Absolute liability offence.
Maximum penalty:	50 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that:
  - (a) the child produced to the defendant acceptable proof of age before the child was admitted to the area; and
  - (b) the defendant believed, on reasonable grounds, that the child was an adult.
- (4) The manager of a restricted publications area must not exhibit or allow the exhibition of a film classified R 18+ or X 18+ in the area except by way of a slot-machine operated by a coin or token.  

Fault elements:	
(a)	intentionally exhibiting the film or knowledge that the film is exhibited (or recklessness as to that fact); and

- (b) knowledge that, or recklessness as to whether, the film is classified R 18+ or X 18+.

Maximum penalty: 50 penalty units.

## **Part 13            Production or copying of films and computer games**

### **106            Definition**

In this Part:

*produce* means provide creative, technical or theatrical services, including scripting, directing, filming and performing, whether or not for a fee, reward or other consideration.

*publish* includes publish outside the Territory.

### **107            Production of films or computer games**

- (1) A person must not produce a film if the film is:

- (a) classified RC or X 18+; or  
(b) unclassified but would, if classified, be classified RC or X 18+.

Fault elements:

- (a) intentionally producing the film; and  
(b) knowledge that, or recklessness as to whether, the film is classified RC or X 18+ or unclassified.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) If the film is unclassified, absolute liability applies to the circumstance that the film would, if classified, be classified RC or X 18+.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant believed, on reasonable grounds, that the film:
- (a) was classified other than as RC or X 18+; or  
(b) was intended to be presented for classification and expected to be classified other than as RC or X 18+; or



(c) was not intended to be published or made available for publication.

(4) A person must not produce a computer game if the game is:

(a) classified RC; or

(b) unclassified but would, if classified, be classified RC.

Fault elements:

(a) intentionally producing the game; and

(b) knowledge that, or recklessness as to whether, the game is classified RC or unclassified.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(5) If the game is unclassified, absolute liability applies to the circumstance that the game would, if classified, be classified RC.

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves that the defendant believed, on reasonable grounds, that the game:

(a) was classified other than as RC; or

(b) was intended to be presented for classification and expected to be classified other than as RC; or

(c) was not intended to be published or made available for publication.

## **108 Copying of films or computer games**

(1) A person must not copy, or cause to be copied, a film with the intention of publishing the film if the film is:

(a) classified RC or X 18+; or

(b) unclassified.

Fault elements:

(a) intention to publish the film; and

- 
- (b) knowledge that, or recklessness as to whether, the film is classified RC or X 18+ or unclassified.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) A person must not copy, or cause to be copied, a computer game with the intention of publishing the game if the game is:

- (a) classified RC; or

- (b) unclassified.

Fault elements:

- (a) intention to publish the game; and

- (b) knowledge that, or recklessness as to whether, the game is classified RC or unclassified.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

## **Part 14 Search, seizure and forfeiture**

### **109 Interpretation**

- (1) For this Part, a thing is connected with an offence if it is a thing:
  - (a) in relation to which the offence has been committed; or
  - (b) that will afford evidence of the commission of the offence; or
  - (c) that was used, or is intended to be used, for the purpose of committing the offence.
- (2) A reference in this Part to an offence is to be read as including a reference to an offence that there are reasonable grounds for believing has been, or is about to be, committed.

### **110 Search and seizure**

A police officer may enter on land, or on or into premises, and may search for and seize a thing that the officer believes on reasonable grounds to be connected with an offence against this Act that is found on the land or on or in the premises if, and only if, the search and seizure is made by the police officer:

- (a) under a warrant issued under the *Police Administration Act*; or

- (b) after obtaining the consent, voluntarily given, of the occupier or the person in charge of the land or premises.

### **111 Consent to search**

- (1) Before obtaining the consent of a person for section 110, a police officer must inform the person that the person may refuse to give consent.
- (2) A police officer who obtains the consent of a person for section 110 must ask the person to sign an acknowledgment of:
  - (a) the fact that the person has been informed that he or she may refuse to give his or her consent; and
  - (b) the fact that the person has voluntarily given his or her consent; and
  - (c) the date on which, and the time at which, the person gave his or her consent.
- (3) If it is material, in any proceedings, for the court to be satisfied of the voluntary consent of a person for section 110 and an acknowledgment, in accordance with subsection (2), signed by the person has not been produced in evidence, the court must assume, unless the contrary is proved, that the person did not voluntarily give consent.

### **112 Forfeiture**

- (1) 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 that the film, publication, computer game or sexual article to which the offence relates is forfeited to the Territory.
- (2) If a film, publication, computer game or sexual article has been lawfully seized by a police officer but no person has been charged with an offence in respect of it, a police officer must apply, within 60 days after the seizure, to the court for the issue of a summons under subsection (3).
- (3) On an application under subsection (2), the court must issue a summons requiring the occupier of the place from which or the person from whom, the film, publication, computer game or sexual article was seized, or both, to show cause why it should not be forfeited to the Territory.

- (4) If the court issues a summons, it must cause notice of the proceeding to be given, if practicable, to each person whose name appears on the film, publication, computer game or sexual article as its author, publisher, printer, manufacturer or owner.
- (5) The court may permit a person who claims to be the author, publisher, printer, manufacturer or owner of the film, publication, computer game or sexual article seized to appear in the proceeding, whether a notice has been given to the person or not.
- (6) On the hearing of a summons:
- (a) if the court is satisfied that:
- (i) an offence against this Act has been committed in respect of the film, publication, computer game or sexual article; and
- (ii) it is desirable that the film, publication, computer game or sexual article be forfeited to the Territory;
- it must so order the forfeiture; or
- (b) if the court is not so satisfied, it must order that the film, publication, computer game or sexual article be delivered to the person apparently entitled to possession immediately before its seizure.
- (7) Subject to subsection (8), a film, publication, computer game or sexual article forfeited under this section may be destroyed or otherwise dealt with as directed by the Minister.
- (8) The Minister must not direct the destruction of a film, publication, computer game or sexual article before the expiration of the time allowed for instituting an appeal against the order or, if an appeal is lodged within that time, before the determination of the appeal.

## **Part 15                    Miscellaneous matters**

### **113                    Authority to prosecute**

Proceedings for an offence against this Act must not be instituted except with the written consent of the Attorney-General or the Director of Public Prosecutions.

**114 Liability of executive officers of bodies corporate**

- (1) If a body corporate commits an offence against this Act (the *principal offence*):
  - (a) each executive officer of the body corporate commits an offence (the *secondary offence*); and
  - (b) the officer is liable to the penalty applicable to an individual who commits the principal offence.
- (2) However, it is a defence for an executive officer to establish:
  - (a) the officer did not know, and could not reasonably have been expected to know, the principal offence was to be or was being committed; or
  - (b) the officer exercised due diligence to prevent the commission of the principal offence.
- (3) The executive officer may be found guilty of the secondary offence even though the body corporate has not been charged with, or found guilty of, the principal offence.
- (4) This section does not affect the liability of the body corporate for the principal offence.
- (5) In this section:

*executive officer*, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

**115 Evidence**

In proceedings for an offence against this Act, a certificate signed or purported to be signed by the National Director, Deputy Director or Convenor and stating that:

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

- (d) the film, publication or computer game to which the certificate relates is the film, publication or computer game that has been so classified or not so classified, as the case may be; or
- (e) 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 facts stated in it.

#### **116 Statement of prosecution**

In a proceeding for an offence against this Act, a statement of the prosecution contained in an information or complaint about any of the matters listed in section 115 is evidence of the matter stated.

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

A prosecution for an offence against this Act may be commenced within 2 years after the date on which the offence is alleged to have been committed.

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

#### **119 Service of notices**

A notice that is required by this Act to be given to a person may be given by:

- (a) delivering it to the person personally; or
- (b) sending it to the person by post addressed to the person at his or her last known place of residence or business; or
- (c) leaving it at the person's last known place of residence or business with a person who apparently has attained the age of 16 years and is apparently resident or employed at that place.

**120 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may:
  - (a) prescribe a fine for an offence against the Regulations not exceeding:
    - (i) if the offender is an individual person – 20 penalty units; or
    - (ii) if the offender is a body corporate – 100 penalty units; or
  - (b) provide for:
    - (i) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations; and
    - (ii) the service of a notice relating to payment of the amount on a person alleged to have committed the offence; and
    - (iii) the particulars to be included in the notice; or
  - (c) prescribe requirements for the construction, conduct and management of restricted publications areas.

**Part 16 Repeals and transitional matters for  
Classification of Publications Act 1985****121 Repeal**

The *Classification of Publications Act 1979* (being Act No. 135 of 1979) and the *Classification of Publications Amendment Act 1982* (being Act No. 28 of 1982) are repealed.

**122 Transitional**

- (1) The Acts repealed by section 67 continue to apply to and in relation to all publications which, immediately before the commencement of this Act, had a classification under those Acts as then in force, as if this Act had never commenced.

- (2) For section 17, the words *this Act* as used in that section include:
- (a) the Acts repealed by section 67; and
  - (b) those Acts in their continued application because of subsection (1).

## Part 17 Transitional matters for Classification of Publications, Films and Computer Games Amendment Act 2005

### 123 Definitions

In this Part:

*amending Commonwealth Act* means the *Classification (Publications, Films and Computer Games) Amendment Act 2004* (Cth).

*commencement date* means the date on which this Part commences.

*equivalent classification* means:

- (a) for a film classified under the former scheme with a classification specified in column 1 of an item in the Table – the classification specified in column 3 of that item; or
- (b) for a computer game classified under the former scheme with a classification specified in column 2 of an item in the Table – the classification specified in column 3 of that item.

*former scheme* means the scheme for the classification of publications, films and computer games under the Commonwealth Act as in force immediately before the commencement of Schedule 1 to the amending Commonwealth Act.

*new scheme* means the scheme for the classification of publications, films and computer games under the Commonwealth Act as in force on and after the commencement of Schedule 1 to the amending Commonwealth Act.



TABLE

Item	Column 1 Film classification – former scheme	Column 2 Computer game classification – former scheme	Column 3 Film and computer game classifications – new scheme ( <i>see note</i> )
1	G	G	G
2	PG	G (8+)	PG
3	M	M (15+)	M
4	MA	MA (15+)	MA 15+
5	R		R 18+
6	X		X 18+
7	RC	RC	RC

*Note for table*

*The classifications R 18+ and X 18+ apply only to films.*

#### **124 Classifications made before commencement date**

- (1) On and after the commencement date, a film or computer game classified under the former scheme is taken to have the equivalent classification under the new scheme.
- (2) On and after the commencement date, a marking on an advertisement for the film or computer game, or on the container, wrapping or casing in which it is sold, showing the classification under the former scheme is taken to show the equivalent classification under the new scheme.

#### **125 Offences committed before commencement date**

- (1) Proceedings for an offence against this Act that was committed or is alleged to have been committed before the commencement date must be dealt with as if this Act and the Commonwealth Act, as in force immediately before the commencement date, had continued in force.
- (2) Subsection (1) has effect whether the proceedings commence before or after the commencement date.

**Part 18 Transitional matters for Classification of Publications, Films and Computer Games Amendment Act 2008**

**126 Definitions**

In this Part:

*amending Act* means the *Classification of Publications, Films and Computer Games Amendment Act 2008*.

*commencement date* means the date on which this Part commences.

*new Part 10* means Part 10 of this Act, as in force on the commencement date.

*old Part 10* means Part 10 of this Act, as in force immediately before the commencement date.

**127 Applications, directions and approvals made**

- (1) A direction or approval given under old Part 10 and in force immediately before the commencement date has effect as if it had been given under new Part 10.
- (2) An application for an approval made under old Part 10 and pending immediately before the commencement date is taken to have been made under new Part 10.

**128 Transitional regulations**

The Regulations may make provision for transitional matters arising out of the enactment of the amending Act and for which this Act does not make sufficient provision.

**Schedule**

section 55(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**

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**ENDNOTES**
**1 KEY**

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

**2 LIST OF LEGISLATION*****Classification of Publications Act 1985 (Act No. 7, 1985)***

Assent date	1 April 1985
Commenced	ss 5, 6, 25 and 26: 1 May 1986; rem: 1 June 1986 (s 2, <i>Gaz</i> G17, 1 May 1985, p 7 and <i>Gaz</i> S26, 28 May 1986)

***Statute Law Revision Act 1989 (Act No. 60, 1989)***

Assent date	2 October 1989
Commenced	2 October 1989

***Director of Public Prosecutions (Consequential Amendments) Act 1990 (Act No. 29, 1990)***

Assent date	11 June 1990
Commenced	21 January 1991 (s 2, s 2 <i>Director of Public Prosecutions Act 1990</i> (Act No. 35, 1990) and <i>Gaz</i> G2, 16 January 1991, p 9)

***Classification of Publications Amendment Act 1991 (Act No. 63, 1991)***

Assent date	14 November 1991
Commenced	12 August 1992 ( <i>Gaz</i> G32, 12 August 1992, p 3)

**Amending Legislation*****Statute Law Revision Act 1992 (Act No. 46, 1992)***

Assent date	7 September 1992
Commenced	7 September 1992 (s 2(2))

***Classification of Publications and Films Amendment Act 1992 (Act No. 82, 1992)***

Assent date	18 December 1992
Commenced	1 January 1993 ( <i>Gaz</i> S66, 24 December 1992, p 3)

***Classification of Publications and Films Amendment Act 1993 (Act No. 10, 1993)***

Assent date	15 April 1993
Commenced	1 May 1993 ( <i>Gaz</i> S42, 30 April 1993)

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***Classification of Publications and Films Amendment Act 1994 (Act No. 18, 1994)***

Assent date 18 April 1994  
 Commenced 1 June 1994 (*Gaz* S35, 20 May 1994)

**Amending Legislation**

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date 20 September 1994  
 Commenced 20 September 1994

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date 20 September 1994  
 Commenced 20 September 1994

***Classification of Publications and Films Amendment Act 1995 (Act No. 53, 1995)***

Assent date 28 December 1995  
 Commenced 1 January 1996 (s 3, s 2 *Classification (Publications, Films and Computer Games) Act 1995* (Cth Act No. 7, 1995) and Cth *Gaz* GN50, 1 January 1996)

***Statute Law Revision Act 1998 (Act No. 11, 1998)***

Assent date 30 March 1998  
 Commenced 30 March 1998

***Classification of Publications, Films and Computer Games Amendment Act 2002 (Act No. 1, 2002)***

Assent date 28 March 2002  
 Commenced 22 March 2002 (s 2)

***Classification of Publications, Films and Computer Games Amendment Act 2005 (Act No. 21, 2005)***

Assent date 6 May 2005  
 Commenced 26 May 2005 (s 2 and s 2 *Classification (Publications, Films and Computer Games) Act 2004* (Cth Act No. 61, 2004))

***Legal Profession (Consequential Amendments) Act 2007 (Act No. 7, 2007)***

Assent date 17 May 2007  
 Commenced s 10: 1 July 2007 (*Gaz* G26, 27 June 2007, p 3);  
 rem: 17 May 2007

***Classification of Publications, Films and Computer Games Amendment Act 2008 (Act No. 25, 2008)***

Assent date 17 October 2008  
 Commenced 1 July 2009 (*Gaz* G25, 24 June 2009, p 2)

***Statute Law Revision Act 2010 (Act No. 29, 2010)***

Assent date 9 September 2010  
 Commenced 13 October 2010 (*Gaz* G41, 13 October 2010, p 2)

***Statute Law Revision Act 2011 (Act No. 30, 2011)***

Assent date 31 August 2011  
 Commenced 21 September 2011 (*Gaz* G38, 21 September 2011, p 5)

***Classification of Publications, Films and Computer Games Amendment Act 2012 (Act No. 29, 2012)***

Assent date 11 December 2012  
 Commenced 1 January 2013 (s 2)

### 3 SAVINGS AND TRANSITIONAL PROVISIONS

- s 38 *Classification of Publications Amendment Act 1995* (Act No. 63, 1991)  
 s 27 *Classification of Publications and Films Amendment Act 1995* (Act No. 53, 1995)  
 s 18 *Classification of Publications, Films and Computer Games Amendment Act 2002* (Act No. 1, 2002)

### 4 LIST OF AMENDMENTS

- It amd No. 63, 1991, s 4  
 pt 1 hdg amd No. 25, 2008, s 27; No. 30, 2011, s 3  
 s 1 amd No. 63, 1991, s 5; No. 53, 1995, s 5  
 s 3 amd No. 63, 1991, s 6; No. 18, 1994, s 4  
     sub No. 53, 1995, s 6  
     amd No. 1, 2002, s 4; No. 25, 2008, s 4; No. 30, 2011, s 3  
 s 3A ins No. 53, 1995, s 7  
     amd No. 30, 2011, s 3  
 s 3B ins No. 25, 2008, s 5  
 s 4 amd No. 63, 1991, s 7  
     sub No. 53, 1995, s 7; No. 1, 2002, s 5  
     amd No. 30, 2011, s 3  
 s 4AA ins No. 25, 2008, s 6  
     amd No. 30, 2011, s 3  
 pt 2 hdg amd No. 25, 2008, s 27  
 s 4A ins No. 63, 1991, s 8  
     amd No. 30, 2011, s 3  
 s 5 amd No. 63, 1991, s 9  
     rep No. 53, 1995, s 8  
 s 6 rep No. 53, 1995, s 8  
 s 8 amd No. 53, 1995, s 9; No. 7, 2007, s 16; No. 29, 2010, s 7; No. 30, 2011, s 3  
 ss 9 – 14 amd No. 30, 2011, s 3  
 s 15 amd No. 29, 2010, s 7; No. 30, 2011, s 3  
 s 16 sub No. 53, 1995, s 10  
     amd No. 11, 1998, s 10; No. 29, 2010, s 7; No. 30, 2011, s 3  
 s 17 amd No. 63, 1991, s 10; No. 30, 2011, s 3  
 pt 3 hdg sub No. 53, 1995, s 11  
     amd No. 25, 2008, s 27  
 pt 3  
 div 1 hdg rep No. 53, 1995, s 11  
 s 18 amd No. 63, 1991, s 11  
     rep No. 53, 1995, s 11  
 s 19 amd No. 63, 1991, s 12  
     rep No. 53, 1995, s 11  
 s 20 amd No. 63, 1991, s 13  
     rep No. 53, 1995, s 11  
 s 21 amd No. 60, 1989, s 6  
     sub No. 63, 1991, s 14  
     rep No. 53, 1995, s 11  
 s 22 amd No. 63, 1991, s 15  
     rep No. 53, 1995, s 11  
 ss 23 – 24 rep No. 53, 1995, s 11  
 s 24A ins No. 18, 1994, s 5  
     rep No. 53, 1995, s 11  
 s 24B ins No. 18, 1994, s 5  
     rep No. 53, 1995, s 11

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s 24C	ins No. 18, 1994, s 5 amd No. 50, 1994, s 2 rep No. 53, 1995, s 11
s 24D	ins No. 18, 1994, s 5 amd No. 50, 1994, s 2 rep No. 53, 1995, s 11
s 24E	ins No. 18, 1994, s 5 rep No. 53, 1995, s 11
pt 3	
div 2 hdg	rep No. 53, 1995, s 11
s 25	amd No. 63, 1991, s 16; No. 18, 1994, s 6; No. 50, 1994, s 2; No. 53, 1995, s 12; No. 30, 2011, s 3
s 26	amd No. 63, 1991, s 17; No. 18, 1994, s 15 rep No. 53, 1995, s 13
s 27	amd No. 63, 1991, s 18 rep No. 53, 1995, s 13
s 28	sub No. 18, 1994, s 7 rep No. 53, 1995, s 13
s 29	amd No. 63, 1991, s 19; No. 10, 1993, ss 4 and 12 rep No. 53, 1995, s 13
s 30	amd No. 63, 1991, s 20; No. 18, 1994, s 15 rep No. 53, 1995, s 13
s 30A	ins No. 63, 1991, s 21 rep No. 53, 1995, s 13
s 31	sub No. 63, 1991, s 22 rep No. 53, 1995, s 13
s 32	sub No. 63, 1991, s 22 amd No. 18, 1994, s 15 rep No. 53, 1995, s 13
s 33	sub No. 63, 1991, s 22 rep No. 53, 1995, s 13
s 34	rep No. 63, 1991, s 22
pt 3	
div 2A hdg	ins No. 63, 1991, s 23 rep No. 53, 1995, s 13
s 34A	ins No. 63, 1991, s 23 amd No. 18, 1994, s 15 rep No. 53, 1995, s 13
s 34B	ins No. 63, 1991, s 23 rep No. 53, 1995, s 13
s 34C	ins No. 63, 1991, s 23 amd No. 18, 1994, s 15 rep No. 53, 1995, s 13
s 34D	ins No. 63, 1991, s 23 amd No. 18, 1994, s 15 rep No. 53, 1995, s 13
pt 3	
div 3 hdg	rep No. 53, 1995, s 14
pt 4 hdg	sub No. 53, 1995, s 14; No. 25, 2008, s 7
pt 4	
div 1 hdg	amd No. 18, 1994, s 10 sub No. 53, 1995, s 14; No. 25, 2008, s 7
s 35	amd No. 63, 1991, s 24; No. 18, 1994, s 8; No. 50, 1994, s 2 sub No. 53, 1995, s 14 amd No. 21, 2005, s 4 sub No. 25, 2008, s 7
s 35A	ins No. 18, 1994, s 9 rep No. 53, 1995, s 14

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- s 36            amd No. 63, 1991, s 25; No. 10, 1993, ss 5 and 12  
                  sub No. 53, 1995, s 14  
                  amd No. 21, 2005, s 5  
                  sub No. 25, 2008, s 7
- s 37            amd No. 63, 1991, s 26  
                  sub No. 53, 1995, s 14  
                  amd No. 21, 2005, s 6  
                  sub No. 25, 2008, s 7
- s 38            amd No. 18, 1994, s 11  
                  sub No. 53, 1995, s 14  
                  amd No. 21, 2005, s 7  
                  sub No. 25, 2008, s 7
- pt 4  
div 1A hdg    ins No. 63, 1991, s 27  
                  rep No. 53, 1995, s 14
- s 38A          ins No. 63, 1991, s 27  
                  amd No. 10, 1993, s 6  
                  rep No. 53, 1995, s 14
- s 38B          ins No. 63, 1991, s 27  
                  amd No. 82, 1992, s 4; No. 10, 1993, s 7  
                  rep No. 53, 1995, s 14
- s 38C          ins No. 63, 1991, s 27  
                  amd No. 10, 1993, s 12  
                  rep No. 53, 1995, s 14
- s 38D          ins No. 63, 1991, s 27  
                  amd No. 10, 1993, s 8  
                  rep No. 53, 1995, s 14
- s 38DA        ins No. 10, 1993, s 9  
                  rep No. 53, 1995, s 14
- s 38E          ins No. 63, 1991, s 27  
                  amd No. 10, 1993, s 12  
                  rep No. 53, 1995, s 14
- s 38F          ins No. 63, 1991, s 27  
                  rep No. 53, 1995, s 14
- s 38FA        ins No. 10, 1993, s 10  
                  rep No. 53, 1995, s 14
- s 38G          ins No. 63, 1991, s 27  
                  amd No. 10, 1993, s 12  
                  rep No. 53, 1995, s 14
- s 39            sub No. 53, 1995, s 14  
                  amd No. 21, 2005, s 8  
                  sub No. 25, 2008, s 7
- s 40            sub No. 53, 1995, s 14  
                  amd No. 21, 2005, s 9  
                  sub No. 25, 2008, s 7
- s 41            sub No. 53, 1995, s 14  
                  amd No. 21, 2005, s 10  
                  sub No. 25, 2008, s 7
- s 42            sub No. 53, 1995, s 14  
                  amd No. 21, 2005, s 11  
                  sub No. 25, 2008, s 7
- s 43            sub No. 53, 1995, s 14  
                  amd No. 21, 2005, s 12  
                  sub No. 25, 2008, s 7
- s 44            sub No. 53, 1995, s 14  
                  amd No. 21, 2005, s 13  
                  sub No. 25, 2008, s 7



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pt 4	
div 2 hdg	sub No. 53, 1995, s 14; No. 25, 2008, s 7
s 45	sub No. 53, 1995, s 14 amd No. 21, 2005, s 14 sub No. 25, 2008, s 7
s 46	sub No. 53, 1995, s 14 amd No. 21, 2005, s 15 sub No. 25, 2008, s 7
s 47	amd No. 18, 1994, s 15 sub No. 53, 1995, s 14 amd No. 1, 2002, s 6; No. 21, 2005, s 16 sub No. 25, 2008, s 7
s 47A	ins No. 63, 1991, s 28 rep No. 53, 1995, s 14
s 48	amd No. 18, 1994, s 15 sub No. 53, 1995, s 14 amd No. 21, 2005, s 17 sub No. 25, 2008, s 7
s 49	amd No. 63, 1991, s 29; No. 10, 1993, ss 11 and 12; No. 18, 1994, s 15 sub No. 53, 1995, s 14 amd No. 21, 2005, s 18 sub No. 25, 2008, s 7
s 49A	ins No. 18, 1994, s 12 rep No. 53, 1995, s 14
s 50	sub No. 53, 1995, s 14 amd No. 21, 2005, s 19 sub No. 25, 2008, s 7
s 50A	ins No. 63, 1991, s 30 amd No. 18, 1994, s 15 sub No. 53, 1995, s 14 amd No. 21, 2005, s 20 rep No. 25, 2008, s 7
s 50B	ins No. 53, 1995, s 14 amd No. 21, 2005, s 21 rep No. 25, 2008, s 7
s 50C	ins No. 53, 1995, s 14 amd No. 21, 2005, s 22 rep No. 25, 2008, s 7
s 50D	ins No. 53, 1995, s 14 amd No. 21, 2005, s 23 rep No. 25, 2008, s 7
s 50E	ins No. 53, 1995, s 14 amd No. 1, 2002, s 7; No. 21, 2005, s 24 rep No. 25, 2008, s 7
s 50F	ins No. 53, 1995, s 14 amd No. 1, 2002, s 8; No. 21, 2005, s 25 rep No. 25, 2008, s 7
s 50FA	ins No. 1, 2002, s 9 amd No. 21, 2005, s 26 rep No. 25, 2008, s 7
s 50FB	ins No. 1, 2002, s 9 amd No. 21, 2005, s 27 rep No. 25, 2008, s 7
s 50G	ins No. 53, 1995, s 14 amd No. 1, 2002, s 10; No. 21, 2005, s 28 rep No. 25, 2008, s 7

## ENDNOTES

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- s 50H ins No. 53, 1995, s 14  
amd No. 21, 2005, s 29  
rep No. 25, 2008, s 7
- s 50I ins No. 53, 1995, s 14  
amd No. 21, 2005, s 30  
rep No. 25, 2008, s 7
- s 50J ins No. 53, 1995, s 14  
amd No. 21, 2005, s 31  
rep No. 25, 2008, s 7
- s 50K ins No. 53, 1995, s 14  
amd No. 21, 2005, s 32  
rep No. 25, 2008, s 7
- s 50L ins No. 53, 1995, s 14  
amd No. 21, 2005, s 33  
rep No. 25, 2008, s 7
- s 50M ins No. 53, 1995, s 14  
amd No. 21, 2005, s 34  
rep No. 25, 2008, s 7
- s 50N ins No. 53, 1995, s 14  
amd No. 21, 2005, s 35  
rep No. 25, 2008, s 7
- s 50P ins No. 53, 1995, s 14  
amd No. 21, 2005, s 36  
rep No. 25, 2008, s 7
- s 50Q ins No. 53, 1995, s 14  
amd No. 21, 2005, s 37  
rep No. 25, 2008, s 7
- s 50R ins No. 53, 1995, s 14  
amd No. 1, 2002, s 11; No. 21, 2005, s 38  
rep No. 25, 2008, s 7
- s 50S ins No. 53, 1995, s 14  
amd No. 21, 2005, s 39  
rep No. 25, 2008, s 7
- s 50T ins No. 53, 1995, s 14  
amd No. 21, 2005, s 40  
rep No. 25, 2008, s 7
- s 50U ins No. 53, 1995, s 14  
amd No. 21, 2005, s 41  
rep No. 25, 2008, s 7
- s 50V ins No. 53, 1995, s 14  
amd No. 21, 2005, s 42  
rep No. 25, 2008, s 7
- s 50W ins No. 53, 1995, s 14  
amd No. 21, 2005, s 43  
rep No. 25, 2008, s 7
- s 50ZB ins No. 53, 1995, s 14  
amd No. 1, 2002, s 12; No. 21, 2005, s 46  
rep No. 25, 2008, s 11
- s 50ZC ins No. 53, 1995, s 14  
amd No. 21, 2005, s 47  
rep No. 25, 2008, s 11
- s 50ZD ins No. 53, 1995, s 14  
amd No. 21, 2005, s 48  
rep No. 25, 2008, s 11
- s 50ZE ins No. 53, 1995, s 14  
amd No. 21, 2005, s 49  
rep No. 25, 2008, s 11

## ENDNOTES

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