

NORTHERN TERRITORY OF AUSTRALIA

CLASSIFICATION OF PUBLICATIONS, FILMS AND COMPUTER GAMES
AMENDMENT ACT 2008

Act No. 25 of 2008

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 25 of 2008

An Act to amend the *Classification of Publications, Films and Computer Games Act*, and for related purposes

[Assented to 17 October 2008]
[Second reading 10 September 2008]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Classification of Publications, Films and Computer Games Amendment Act 2008*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Classification of Publications, Films and Computer Games Act

3 Act amended

This Part amends the *Classification of Publications, Films and Computer Games Act*.

4 Amendment of section 3 (Definitions)

(1) Section 3

omit

In this Act, unless the contrary intention appears –

substitute

In this Act:

(2) Section 3, definitions ***approved form, exhibit, minor, restricted publications area***

omit

(3) Section 3

insert (in alphabetical order)

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

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

child means a person under 18 years of age.

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

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

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

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.

restricted publications area, see section 104(1).

(4) Section 3, definition ***submittable publication***

omit

section 50ZM

substitute

section 90

5 New section 3B

After section 3A

insert

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.

6 New section 4AA

After section 4

insert

4AA Application of Criminal Code

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

Note

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.

7 Repeal and substitution of Parts IV to VI

Parts IV to VI

repeal, substitute

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

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

50 Sale or delivery of certain films to child

- (1) A person must not sell or deliver a film to a child if:

- (a) the film is 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 selling or delivering 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: For a film classified RC, or an unclassified film that would, if classified, be classified, RC:

200 penalty units or imprisonment for 2 years.

For another film:

100 penalty units or imprisonment for 12 months.

- (2) Absolute liability applies to:

- (a) the circumstance that the person to whom the film is sold or delivered is a child; and

- (b) if the film is unclassified – the circumstance that the film would, if classified, be classified RC, X 18+ or R 18+.
- (3) Subsection (1) does not apply if:
- (a) the film is classified R 18+; and
 - (b) the child is at least 15 years of age; and
 - (c) the person who sells or delivers the film to the child is a parent or guardian of the child.
- (4) It is a defence to a prosecution for an offence against subsection (1) if:
- (a) the defendant proves that:
 - (i) the child produced to the defendant acceptable proof of age before the defendant sold or delivered the film to the child; and
 - (ii) the defendant believed, on reasonable grounds, that the child was an adult; or
 - (b) for the delivery of a film classified R 18+ – the defendant proves that the child was employed by the defendant and the delivery took place in the course of employment.
- (5) A child commits an offence if:
- (a) the child is at least 15 years of age; and
 - (b) the child buys a film classified RC, X 18+ or R 18+.
- Fault element: Knowledge that the film is classified RC, X 18+ or R 18+.
- Maximum penalty: 50 penalty units.
- (6) A person must not sell or deliver a film to a child under 15 years of age if the film is:
- (a) classified MA 15+; or
 - (b) unclassified but would, if classified, be classified MA 15+.
- Fault elements:
- (a) intentionally selling or delivering the film; and
 - (b) knowledge that, or recklessness as to whether, the film is

classified MA 15+ or unclassified.

Maximum penalty: 50 penalty units.

- (7) Absolute liability applies to:
- (a) the circumstance that the person to whom the film is sold or delivered is under 15 years of age; and
 - (b) if the film is unclassified – the circumstance that the film would, if classified, be classified MA 15+.
- (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.

- (3) A child who is at least 15 years of age must not buy a computer game classified RC.

Fault element: Knowledge that the game is classified RC.

Maximum penalty: 50 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 and MA 15+ computer games

- (1) 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 or MA 15+; or
- (b) unclassified but would, if classified, be classified RC 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 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 MA 15+, or an unclassified game that would, if classified, be classified MA 15+:

50 penalty units.

68 Private demonstration of RC 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
 - (ii) unclassified but would, if classified, be classified RC; 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 unclassified.

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

- (2) Absolute liability applies to:
- (a) if the game is unclassified – the circumstance that the game would, if classified, be classified RC; 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
 - (b) unclassified but would, if classified, be classified RC.

Fault elements:

- (a) intentionally selling or delivering 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) 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.
- (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 or MA 15+; or
 - (b) unclassified but would, if classified, be classified RC 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 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 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 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.

8 Amendment of section 50X (Definition)

- (1) Section 50X
renumber as section 75
- (2) Section 75 (as renumbered), heading
omit, substitute

Definitions

- (3) Section 75 (as renumbered), definition ***code of practice***
omit
section 50Y

substitute

section 76

9 Amendment of section 50Y (Codes of practice)

Section 50Y

renumber as section 76

10 Repeal and substitution of sections 50Z and 50ZA

Sections 50Z and 50ZA

repeal, substitute

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.

11 Repeal and substitution of Part VIII

Part VIII

repeal, substitute

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.

12 Amendment of section 50ZM (Calling in submittable publications for classification)

- (1) Section 50ZM

renumber as section 90

- (2) Section 90(3) (as renumbered), penalty

omit, substitute

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

13 Amendment of section 50ZMA (Calling in films for classification)

- (1) Section 50ZMA

renumber as section 91

- (2) Section 91(3) (as renumbered), penalty

omit, substitute

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

14 Amendment of section 50ZN (Calling in computer games for classification)

- (1) Section 50ZN

renumber as section 92

(2) Section 92(3) (as renumbered), penalty

omit, substitute

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

15 Amendment of section 50ZP (Calling in advertisements)

(1) Section 50ZP

renumber as section 93

(2) Section 93(1)(b) (as renumbered)

omit

classified

(3) Section 93(2) (as renumbered), penalty

omit, substitute

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

16 Amendment of section 50ZPA (Calling in publications, films and computer games for reclassification)

(1) Section 50ZPA

renumber as section 94

(2) Section 94(2) (as renumbered), penalty

omit, substitute

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

17 Amendment of section 50ZPB (Obtaining copies for review)

(1) Section 50ZPB

renumber as section 95

(2) Section 95(1) (as renumbered)

omit

National Director

substitute

Convenor

(3) Section 95(2) (as renumbered), penalty

omit, substitute

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

18 Repeal and substitution of Parts X to XIII

Parts X to XIII

repeal, substitute

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.

19 Amendment of sections 57 and 58

Sections 57 and 58

renumber as sections 109 and 110

20 Amendment of section 59 (Consent to search)

(1) Section 59

renumber as section 111

(2) Section 111(1) to (3) (as renumbered)

omit

section 58

substitute

section 110

(3) Section 111(3) (as renumbered)

omit (all references)

Court

substitute

court

21 Amendment of sections 60 and 62

Sections 60 and 62

renumber as sections 112 and 113

22 Repeal and substitution of section 63

Section 63

repeal, substitute

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.

23 Amendment of section 64 (Evidence)

- (1) Section 64

renumber as section 115

- (2) Section 115 (as renumbered)

omit

National Director or the Deputy Director

substitute

National Director, Deputy Director or Convenor

24 New section 116

After section 115 (as renumbered)

insert

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.

25 Amendment of sections 64A to 71

Sections 64A to 71

renumber as sections 117 to 125

26 New Part 18

After section 125 (as renumbered)

insert

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.

27 Further amendments

The Schedule has effect.

Part 3 Amendment of Criminal Code

28 Act amended

This Part amends the Criminal Code.

29 Amendment of section 125A (Interpretation)

Section 125A(1), definition *article*, paragraph (h)

omit

Part X

substitute

Part 10

30 Expiry of Part

This Part expires on the day after it commences.

**Part 4 Amendment of Classification of Publications,
Films and Computer Games Regulations**

31 Regulations amended

This Part amends the *Classification of Publications, Films and Computer Games Regulations*.

32 Amendment of regulation 7 (Display of sexual articles)

Regulation 7

omit

section 52(3)(a)

substitute

section 102(3)

33 Amendment of regulation 8 (Exemptions)

(1) Regulation 8

omit

section 61(2)

substitute

section 118

(2) Regulation 8

omit

Batchelor College

substitute

Batchelor Institute

34 Expiry of Part

This Part expires on the day after it commences.

Schedule

section 27

Provision	Amendment	
	<i>omit</i>	<i>substitute</i>
Part I, heading	Part I	Part 1
Part II, heading	Part II	Part 2
Part III, heading	Part III	Part 3
Part VII, heading	Part VII	Part 7
Part IX, heading	Part IX	Part 9
Part XIV, heading	Part XIV	Part 14
Part XV, heading	Part XV	Part 15
Part XVI, heading	Part XVI	Part 16
Part XVII, heading	Part XVII	Part 17
