

NORTHERN TERRITORY OF AUSTRALIA

CLASSIFICATION OF PUBLICATIONS, FILMS AND COMPUTER GAMES
AMENDMENT ACT 2002

Act No. 1 of 2002

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 1 of 2002

AN ACT

to amend the *Classification of Publications, Films and Computer Games Act*

[Assented to 28 March 2002]
[Second reading 28 February 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Classification of Publications, Films and Computer Games Amendment Act 2002*.

2. Commencement

This Act comes into operation on 22 March 2002.

3. Principal Act

The *Classification of Publications, Films and Computer Games Act* is in this Act referred to as the Principal Act.

4. Definitions

Section 3 of the Principal Act is amended –

- (a) by inserting after the definition of "determined markings" the following:

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

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

- (b) by inserting after the definition of "guardian" the following:
- " '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;";
- (c) by adding "(except a vessel on an international voyage or an aircraft on an international flight)" after "aircraft" in the definition of "place"; and
- (d) by inserting after the definition of "restricted publications area" the following:
- " 'Review Board' means the Classification Review Board established by the Commonwealth Act;".

5. Repeal and substitution

Section 4 of the Principal Act is repealed and the following substituted:

"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* of the Commonwealth applies."

6. Films to bear determined markings and consumer advice

Section 47 of the Principal Act is amended –

- (a) by omitting from subsection (1) "film." and substituting "film in the manner determined by the National Director under the Commonwealth Act."; and
- (b) by omitting subsection (4) and substituting the following:
- "(4) If –
- (a) a film is reclassified under section 39 or 97A of the Commonwealth Act;
- (b) a film is reclassified by a decision of the Review Board under Part 5 of the Commonwealth Act; or

- (c) the classification or consumer advice for a film is revoked under section 22B(3) of the Commonwealth Act,

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

7. Category 1 restricted publications

Section 50E of the Principal Act is amended –

- (a) by omitting from subsection (1) "A" and substituting "Subject to subsection (2), a";
- (b) by omitting from subsection (1)(a) "opaque" and substituting "plain, opaque"; and
- (c) by omitting subsection (2) and substituting the following:

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

"(3) If –

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

it is sufficient compliance with subsection (1) for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.

"(4) For the purposes of subsection (1), 'plain' does not include the title of the publication."

8. Category 2 restricted publications

Section 50F of the Principal Act is amended by omitting subsection (3) and substituting the following:

"(3) If—

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

it is sufficient compliance with subsection (1)(d) for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation."

9. New sections

The Principal Act is amended by inserting after section 50F the following:

"50FA. Sale or delivery of publications contrary to conditions

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

Penalty: 50 penalty units or imprisonment for 12 months.

"50FB. Consumer advice for Unrestricted publications

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

Penalty: 50 penalty units or imprisonment for 12 months."

10. Misleading or deceptive markings

Section 50G of the Principal Act is amended by omitting subsection (3) and substituting the following:

"(3) If—

- (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act;
- (b) a publication is reclassified by a decision of the Review Board under Part 5 of the Commonwealth Act; or

- (c) the classification for a publication is revoked under section 22B(3) of the Commonwealth Act,

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

11. Computer games to bear determined markings and consumer advice

Section 50R of the Principal Act is amended –

- (a) by inserting after subsection (3) the following:

"(3A) A person must not make a computer game available for playing on a pay and play basis (for example, a coin operated arcade game) unless the determined markings relevant to the classification of the computer game and relevant consumer advice, if any, are displayed on the device used for playing the game.

Penalty: 20 penalty units.

"(3B) If 2 or more computer games are available for playing on a device referred to in subsection (3A), the determined markings and consumer advice to be displayed on the device are those relevant to the computer game with the highest classification under the Commonwealth Act."; and

- (b) by omitting subsection (4) and substituting the following:

"(4) If –

- (a) a computer game is reclassified under section 39 of the Commonwealth Act;
- (b) a computer game is reclassified by a decision of the Review Board under Part 5 of the Commonwealth Act; or
- (c) the classification or consumer advice for a computer game is revoked under section 22B(3) of the Commonwealth Act,

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

12. Certain advertisements not to be published

Section 50ZB of the Principal Act is amended –

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- (a) by omitting from paragraph (b) "Act; or" and substituting "Act;"
- (b) by inserting after paragraph (b) the following:
 - "(ba) if the advertisement was approved under section 29 of the Commonwealth Act and the approval is revoked under section 13(5) or 21A of that Act;"
- (c) by omitting from paragraph (c) "Act, it is" and substituting "Act – is"; and
- (d) by omitting from paragraph (d) "conditions, it is" and substituting "conditions – is".

13. Advertisement to contain determined markings and consumer advice

Section 50ZH of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) If –

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

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

14. Misleading or deceptive advertisements

Section 50ZI of the Principal Act is amended by omitting subsection (3) and substituting the following:

"(3) If –

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

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

15. New section

The Principal Act is amended by inserting after section 50ZM the following:

"50ZMA. 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.

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."

16. Calling in computer games for classification

Section 50ZN of the Principal Act is amended—

(a) by inserting after subsection (1) the following:

"(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."; and

- (b) by inserting in subsection (2) "or (1A)" after "(1)".

17. New sections

The Principal Act is amended by inserting after section 50ZP in Part IX the following:

"50ZPA. 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.

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.

"50ZPB. 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;

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- (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,

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

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

Penalty: 100 penalty units.

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

18. Transitional provisions

The transitional provisions set out in the Schedule have effect.

SCHEDULE

TRANSITIONAL PROVISIONS

1. Definitions

In this Schedule –

"amended Principal Act" means the Principal Act as amended by this Act and in force on 22 March 2002;

"former Principal Act" means the Principal Act as in force immediately before 22 March 2002.

2. Application of section 50E

(1) On and after 22 March 2002, section 50E(1) and (2) of the amended Principal Act applies only in relation to a publication classified Category 1 restricted in respect of which the application for classification is made on or after that date.

(2) On and after 22 March 2002, section 50E(1) of the former Principal Act continues to apply in relation to a publication classified Category 1 restricted in respect of which the application for classification was made before that date.

3. Application of section 50FA

On and after 22 March 2002, section 50FA of the amended Principal Act applies only in relation to a publication classified Unrestricted or Category 1 restricted –

- (a) that is first published on or after that date; or
- (b) in respect of which an application for classification is made on or after that date.

4. Application of section 50FB

On and after 22 March 2002, section 50FB of the amended Principal Act applies only in relation to a publication classified Unrestricted –

- (a) that is first published on or after that date; or
- (b) in respect of which an application for classification is made on or after that date.

5. Application of section 50ZB

On and after 22 March 2002, section 50ZB(ba) of the amended Principal Act applies only in relation to a film, publication or computer game –

- (a) first published on or after that date; or
- (b) for which an application for classification is made on or after that date.

6. Application of sections 50ZMA and 50ZN

On and after 22 March 2002 –

- (a) section 50ZMA of the amended Principal Act applies only in relation to an unclassified film first published on or after that date; and
 - (b) section 50ZN(1A) of the amended Principal Act applies only in relation to an unclassified computer game first published on or after that date.
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