

NORTHERN TERRITORY OF AUSTRALIA  
CLASSIFICATION OF PUBLICATIONS ACT

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No. 7 of 1985

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# NORTHERN TERRITORY OF AUSTRALIA

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No. 7 of 1985

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## AN ACT

To provide for the classification of  
publications and for other purposes

[Assented to 1 April 1985]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### PART I - PRELIMINARY

#### 1. SHORT TITLE

This Act may be cited as the *Classification of Publications Act 1985*.

#### 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, unless the contrary intention appears -

"adult" means a person who has attained the age of 18 years;

"advertising matter", in relation to a film, means a publication comprising written or pictorial matter contained or displayed in or on a container or wrapping where the container or wrapping is used to enclose the film;

"appeal censor" means -

- (a) the officer or authority of the Commonwealth exercising and discharging on behalf of the Territory the powers, authorities, functions and duties of

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appeal censor pursuant to an arrangement under section 24; or

- (b) if there is no such arrangement in operation, an appeal censor appointed under section 26 or, if there is no such appointment, the Board;

"approved" means approved by the Minister;

"Board" means the Publications and Films Review Board established by section 7;

"Category 1 restricted publication" means a publication classified under this Act as a Category 1 restricted publication;

"Category 2 restricted publication" means a publication classified under this Act as a Category 2 restricted publication;

"Censor" means -

- (a) the officer or authority of the Commonwealth exercising and discharging on behalf of the Territory the powers, authorities, functions and duties of a censor of films pursuant to an arrangement under this Act between the Administrator and the Governor-General of the Commonwealth; or

- (b) if there is no such arrangement in operation, the Censor appointed under section 26;

"Censorship Board" means the Censorship Board established under the Films Regulations;

"Chairman" means the Chairman of the Board;

"classification officer" means a person appointed under section 6 as a classification officer;

"classified" means classified under this Act;

"Commonwealth Censor" means the Chief Censor, the Deputy Chief Censor or the Deputy Censor appointed under the Films Regulations;

"Court" means a court of summary jurisdiction;

"film" includes a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image can be produced;

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"Films Regulations" means the Customs (Cinematograph Films) Regulations made and in force from time to time under the *Customs Act 1901* of the Commonwealth;

"infant" means a person who has not attained the age of 18 years;

"member" means a member of the Board, and includes the Chairman;

"objectionable publication" means a publication that -

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

(b) depicts in pictorial form an infant (whether engaged in sexual activity or otherwise) who has not or apparently has not attained the age of 16 years, in a manner that is likely to cause offence to a reasonable adult; or

(c) promotes, incites or encourages terrorism;

"premises" includes a building or structure, whether or not of a temporary nature, and a vehicle or vessel;

"public place" means a place (whether or not covered by water), building, structure, vehicle or vessel that is open to or used by the public, whether or not -

(a) on payment of money or other consideration;

(b) the place, building, structure, vehicle or vessel, or part thereof, is ordinarily so open or used; or

(c) the public to which it is open consists only of a limited class of persons;

"publication" means a book, paper, magazine, film or other written or pictorial matter that is made available, or is intended to be made available, for exhibition, display, sale, letting on hire or distribution to the public;

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

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"restricted publications area" means a building, or part of a building, constructed, conducted and managed in accordance with the prescribed requirements;

"sell" means sell by retail or exchange and includes an agreement to sell and an agreement or offer to exchange;

"terrorism" has the same meaning as in the *Australian Security Intelligence Organization Act 1979* of the Commonwealth.

### 4. APPLICATION

Nothing in this Act applies to, or in relation to, a film that -

- (a) is registered under the Films Regulations; or
- (b) has been produced in Australia by or on behalf of an Australian television station.

## PART II - ADMINISTRATION

### 5. ARRANGEMENTS

The Minister may make such arrangements as he thinks fit with a Minister of State for the Commonwealth for the appointment of an officer of the Public Service of, or a person otherwise employed by, the Commonwealth to be a classification officer.

### 6. CLASSIFICATION OFFICERS

The Minister may, by instrument in writing, appoint such persons as he thinks fit (including, in accordance with an arrangement referred to in section 5, persons referred to in that section) to be classification officers for the purposes of this Act.

### 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 shall consist of 5 members of whom at least -

- (a) one shall be a woman;
- (b) one shall be a man;
- (c) one shall be a legal practitioner; and

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(d) one shall have qualifications, satisfactory to the Minister, in literature, art or education.

(2) Subject to sub-section (3), the Minister may, by notice in the *Gazette*, appoint a person to be a member.

(3) A person who has attained the age of 65 years shall not be appointed as a member and a person shall not be appointed or re-appointed as such a member for a period that extends beyond the date on which he will attain the age of 65 years.

(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. CHAIRMAN

(1) The Minister shall appoint a member to be the Chairman and another member to be the Deputy Chairman of the Board.

(2) The Chairman or, in his absence the Deputy Chairman, shall preside at meetings of the Board at which he is present.

(3) In the absence of the Chairman and Deputy Chairman, the members present at a meeting of the Board shall elect one of their number to be the acting Chairman, and that person may exercise the powers and perform the duties of the Chairman for that meeting.

(4) Where the person holding office as Chairman or Deputy Chairman ceases to be a member, he shall cease to be the Chairman or Deputy Chairman.

### 10. RESIGNATION OF MEMBERS

A member may resign his office by writing signed by him 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 shall terminate the appointment of a member where 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 with his creditors or makes an assignment of his remuneration for their benefit.



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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 sub-section (1).

(3) The validity of a decision of the Board shall not 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 he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the Board, and the member -

(a) shall not, while he has that interest, take part after the disclosure in any deliberation or decision of the Board; and

(b) shall 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 him in his capacity as a member.

15. MEETINGS OF BOARD

(1) The Chairman shall 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 Chairman to convene a meeting of the Board and the Chairman shall convene a meeting in accordance with that direction.

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- (3) At a meeting of the Board -
  - (a) 3 members constitute a quorum;
  - (b) questions arising shall 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 shall, in addition to his deliberative vote, have a casting vote; and
  - (c) subject to this Act, the Board shall determine the procedure to be followed at or in connection with the meeting.
- (4) The Board shall keep records of its meetings.

### 16. FUNCTION AND POWERS OF BOARD

(1) Subject to this Act, the function of the Board is to review decisions made by classification officers classifying or refusing to classify publications for the purposes of this Act.

(2) The Board has such powers as are reasonably necessary to enable it to carry out its function or which are given to it by or under this or any other Act.

### 17. REPORTS

(1) The Board shall, as soon as practicable after 31 December in each year, report to the Minister on the operation of this Act during that year.

(2) The Board may at any time and shall, when required to do so by the Minister, report to the Minister on any matter connected with this Act.

(3) A report referred to in sub-section (1) or (2) shall be tabled in the Legislative Assembly by the Minister within 3 sitting days of the Assembly after it has been received by him.

## PART III - CLASSIFICATION OF PUBLICATIONS

### *Division 1 - Publications other than Films*

### 18. INTERPRETATION

In this Division, "publication" means a publication other than a film or advertising matter in relation to a film.

### 19. CLASSIFICATION OFFICER MAY CLASSIFY PUBLICATIONS

(1) A classification officer may, of his own motion or on application by a person, classify a publication for the purposes of this Act.

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(2) An application for the classification of a publication shall be in writing signed by, or on behalf of, the applicant and shall be lodged with a classification officer together with the prescribed fee.

(3) Where an application is made under this section, a classification officer shall determine the application and notify the applicant in writing of the action taken.

(4) Where a classification officer classifies or refuses to classify a publication, he shall cause a notice of his action to be published in the *Gazette* within 30 days after the date on which the action was taken.

(5) An action referred to in sub-section (4) takes effect for the purposes of this Act on the date on which the notice referred to in that sub-section is published in the *Gazette*.

(6) This section does not apply to or in relation to an application in respect of a publication where -

- (a) a previous application in respect of the same publication has been made but not determined; or
- (b) a classification officer has classified or refused to classify the publication and that action is being reviewed by the Board.

### 20. CLASSIFICATION OF PUBLICATIONS

(1) Where a classification officer decides that a publication is not -

- (a) an objectionable publication; and
- (b) unsuitable for perusal by an infant,

he shall classify the publication as an unrestricted publication.

(2) Subject to this section, where a classification officer decides that a publication -

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

he shall classify the publication as a Category 1 or a Category 2 restricted publication.

## Classification of Publications

(3) A classification officer shall refuse to classify a publication where he is satisfied that the publication describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a manner that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it should not be classified.

(4) A classification officer shall refuse to classify a publication that -

(a) depicts in pictorial form an infant (whether engaged in sexual activity or otherwise), who has not or apparently has not attained the age of 16 years, in a manner that is likely to cause offence to a reasonable adult; or

(b) promotes, incites or encourages terrorism.

(5) Where a classification officer classifies a publication that is a single issue of a series of periodic publications, he may declare that the classification applies to all future issues in the series, or to such issues in that series as are specified in the declaration, and the classification shall apply to those issues accordingly.

### 21. NOTICE OF ACTION OF CLASSIFICATION OFFICER

(1) Where a classification officer classifies or refuses to classify a publication, he shall, by notice in writing to the Minister, inform the Minister of that action.

(2) Where a classification officer classifies or refuses to classify a publication as the result of an application for classification under this Division, he shall, at the same time as he notifies the Minister of that action, send a copy of the notice to the person who applied for the classification of the publication.

(3) The Minister shall, within 30 days after receiving the notice referred to in sub-section (1), publish the notice in the *Gazette*.

(4) The action under section 20 of a classification officer takes effect for the purposes of this Act on the date on which the notice under sub-section (1) is published in the *Gazette*.

### 22. APPLICATION FOR REVIEW OF CLASSIFICATION

(1) Where a classification officer has classified or refused to classify a publication -

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- (a) the person who applied for the classification;
- (b) the publisher of the publication; or
- (c) the Minister,

may apply to the Board for a review of the classification officer's action.

(2) An application under sub-section (1) shall be in writing signed by, or on behalf of, the applicant and shall be lodged with the Chairman -

- (a) where the applicant is a person referred to in sub-section (1)(a) - within 30 days after the date on which the person received written notification of the action to which the application relates;
- (b) where the applicant is a person referred to in sub-section (1)(b) - within 30 days after the notice of the action is published in the *Gazette*; and
- (c) where the applicant is the Minister - at any time after the publication of the notice of the action is published in the *Gazette*.

(3) The prescribed fee is payable by an applicant, other than the Minister, on lodging an application under this section.

### 23. NOTICE OF APPLICATION

Where -

- (a) a classification officer has classified or refused to classify a publication on an application made by a person; and
- (b) a person other than that person applies to the Board for a review of the classification officer's action,

the Board shall cause a notice in writing of the application for the review to be given to the person referred to in paragraph (a).

### 24. REVIEW OF CLASSIFICATION

(1) Where an application for a review of a classification officer's action under this Division is made to the Board, it shall review that action and may -

- (a) confirm the action of the classification officer; or

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- (b) set aside the classification or refusal and classify, or refuse to classify, the publication to which the action relates,

as it thinks fit.

(2) Where the Board acts under this section, the Chairman shall, within 14 days after the date on which that action is taken -

- (a) notify the applicant in writing of the action taken; and
- (b) cause a notice of its action to be published in the *Gazette*.

(3) The Chairman shall keep a record of all actions taken under this section by the Board.

(4) An action taken under this section by the Board takes effect for the purposes of this Act on the day on which the notice referred to in sub-section (2)(b) is published in the *Gazette*.

## *Division 2 - Films*

### 25. ARRANGEMENTS WITH COMMONWEALTH FOR CENSORING FILMS

(1) The Minister may make such arrangements as he thinks fit with a Minister of State for the Commonwealth for the exercise and discharge by officers or authorities of the Commonwealth, on behalf of the Territory, of the powers, authorities, functions and duties of the Commonwealth Censor or of an appeal censor relating to the classification of films for the purposes of this Act.

(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, and shall contain a provision to the effect that the arrangement may be terminated by the Minister at any time.

(3) The Minister shall cause notice of the making of an arrangement under this section to be published in the *Gazette*.

### 26. APPOINTMENT OF CENSOR, &c., WHERE NO ARRANGEMENT IN OPERATION UNDER SECTION 25

(1) Where there is no arrangement in operation under section 25, the Minister shall appoint a person to be -

- (a) the Censor to discharge the authorities, functions and duties of the Commonwealth Censor relating to the classification of films; and

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- (b) an appeal censor to discharge the authorities, functions and duties relating to the review of the classification of films and the approval of advertising matter relating to films,

for the purposes of this Act.

(2) Where there is no arrangement in operation under section 25 in relation to the exercise and discharge by an officer or authority of the Commonwealth on behalf of the Territory of the powers, authorities, functions and duties of an appeal censor and the Minister has not made an appointment under sub-section (1)(b), the Board shall have the power to discharge the authorities, functions and duties relating to the review of the classification of films and the approval of advertising matter relating to films.

### 27. CENSOR MAY CLASSIFY FILMS

(1) The Censor may, of his own motion or on application by a person, classify a film for the purposes of this Act.

(2) Any person may apply to the Censor for the Censor to classify a film.

(3) An application for the classification of a film shall be in writing in accordance with a form approved by the Censor, be signed by, or on behalf of, the applicant and shall be lodged with the Censor together with the prescribed fee, a synopsis of the story depicted by the film and a copy of all advertising matter relating to the film.

(4) This section does not apply to or in relation to an application in respect of a film where -

- (a) a previous application in respect of the same film has been made but not determined; or
- (b) the Censor has classified or refused to classify the film and that action is being reviewed by the appeal censor.

### 28. SCREENING OF FILMS

(1) The Censor may require a film that is the subject of an application for classification to be screened.

(2) Where the Censor requires a film to be screened, he may require the person who applied for the classification of the film to lodge a copy of the film with him, which he may retain for such period as he thinks fit.

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(3) Where the Censor requires a film to be screened, the film shall be screened as and when required by him and the screening shall be carried out at the risk of the person who applied for classification of the film.

(4) At a screening referred to in sub-section (1), the person who applied for classification of the film, not more than 4 representatives of that person and such other persons as are approved by the Censor are entitled to be present.

### 29. CLASSIFICATION OF FILMS BY CENSOR

(1) Where the Censor decides that a film is not -

- (a) an objectionable publication; and
- (b) unsuitable for viewing by an infant,

he shall classify the film as -

- (c) a "G" film, where he is of the opinion that the film is suitable for general exhibition;
- (d) a "PG" film, where he is of the opinion that the film should be viewed by a person who has not attained the age of 12 years only with the guidance of a parent or guardian of that person; or
- (e) an "M" film, where he is of the opinion that the film cannot be recommended for viewing by an infant who has not attained the age of 15 years.

(2) Subject to this section, where the Censor decides that a film -

- (a) depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult; or
- (b) is not suitable for viewing by an infant,

he shall classify the film as an "R" film or an "X" film.

(3) The Censor shall refuse to classify a film where he is satisfied that the film depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a manner that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it should not be classified.



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(4) The Censor shall refuse to classify a film that -

- (a) depicts an infant (whether engaged in sexual activity or otherwise), who has not, or apparently has not, attained the age of 16 years, in a manner that is likely to cause offence to a reasonable adult; or
- (b) promotes, incites or encourages terrorism.

30. ADVERTISING MATTER

(1) Subject to sub-section (2), where the Censor is of the opinion that advertising matter relating to a film that is the subject of an application for classification under this Division -

- (a) depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a manner that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it should not be approved;
- (b) depicts an infant (whether engaged in sexual activity or otherwise), who has not, or apparently has not, attained the age of 16 years, in a manner that is likely to cause offence to a reasonable adult; or
- (c) promotes, incites or encourages terrorism,

he shall refuse to approve the advertising matter.

(2) The Censor may approve advertising matter of a kind referred to in sub-section (1) subject to such conditions, if any, in relation to its publication as he thinks fit.

31. NOTICE OF ACTION OF CENSOR

- (1) Where the Censor -
  - (a) classifies or refuses to classify a film; or
  - (b) approves or refuses to approve advertising matter relating to a film,

he shall, by notice in writing to the Minister, inform the Minister of that action.

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(2) Where the Censor classifies or refuses to classify a film, or approves or refuses to approve advertising matter relating to a film, as the result of an application for classification under this Division he shall, at the same time as he notifies the Minister of that action, send a copy of the notice to the person who applied for the classification of the film.

(3) The Minister shall, within 30 days after receiving a notice referred to in sub-section (1), publish the notice in the *Gazette*.

(4) The action under section 29 or 30 of the Censor takes effect for the purposes of this Act on the date on which the notice under sub-section (1) is published in the *Gazette*.

### 32. APPLICATION FOR REVIEW OF CLASSIFICATION

(1) Where the Censor classifies or refuses to classify a film or approves or refuses to approve advertising matter relating to a film -

- (a) the person who applied for the classification;
- (b) the publisher of the film; or
- (c) the Minister,

may apply to the appeal censor for a review of the Censor's action.

(2) An application under sub-section (1) shall be in writing and signed by, or on behalf of, the applicant and shall be lodged with the appeal censor -

- (a) where the applicant is a person referred to in sub-section (1)(a) or (b) - within 30 days after; and
- (b) where the applicant is the Minister - at any time after,

the publication of the notice under section 31(3) in the *Gazette*.

(3) The prescribed fee is payable by an applicant, other than the Minister, on lodging an application under this section.

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### 33. NOTICE OF APPLICATION

Where -

- (a) the Censor has classified or refused to classify a film, or approved or refused to approve advertising matter in relation to a film, on an application made by a person; and
- (b) a person, other than that person, applies to the appeal censor for a review of that decision,

the appeal censor shall cause a notice in writing of the application for the review to be given to the person referred to in paragraph (a).

### 34. REVIEW OF CLASSIFICATION

(1) Where an application for a review of the Censor's action under this Division is made to the appeal censor, he shall review that action and may -

- (a) confirm the action of the Censor; or
- (b) set aside the classification or approval or refusal to classify or approve and classify or refuse to classify the film, or approve or refuse to approve the advertising matter, to which the application relates,

as he thinks fit.

(2) Where the appeal censor acts under this section, he shall, within 14 days after the date on which that action is taken, by notice in writing to the Minister and the applicant, inform them of that action.

(3) The Minister shall, within 30 days after receiving the notice referred to in sub-section (2), publish in the *Gazette* a notice of the classification of the film, or the decision of the appeal censor in relation to the film or advertising matter, to which the notice under sub-section (2) relates.

(4) The appeal censor shall keep a record of all actions taken under this section by him.

(5) An action taken under this section by the appeal censor takes effect for the purposes of this Act on the date on which the notice referred to in sub-section (3) is published in the *Gazette*.

## Classification of Publications

### Division 3 - Miscellaneous

#### 35. CRITERIA FOR CLASSIFICATION

(1) In this section, "prescribed authority" means the Censor or the appeal censor.

(2) A prescribed authority or classifying officer shall, in considering whether a publication is an objectionable publication, or is suitable or unsuitable for perusal or viewing by an infant, have regard to the standards of morality, decency and propriety generally accepted by reasonable adults and shall have regard to the policy of the Censorship Board.

(3) A prescribed authority or classifying officer shall, in performing his functions under this Act, give effect, as far as possible, to the principles that -

- (a) adults are entitled to read and view what they wish; and
- (b) all persons are entitled to protection from exposure to unsolicited material that they find offensive.

(4) A prescribed authority shall, in deciding whether or not a publication is an objectionable publication, or is suitable or unsuitable for perusal or viewing by an infant, have regard to any literary, artistic or educational merit it may possess and to the general character of the publication, including whether it is of a medical, legal or scientific character.

(5) A prescribed authority or classifying officer shall, in deciding what classification, if any, should be given to a publication, have regard to -

- (a) the persons or class of persons to or amongst whom it is published or is intended or likely to be published; and
- (b) the conditions, if any, subject to which it should be published.

#### 36. CONDITIONS APPLYING TO CLASSIFIED PUBLICATIONS

(1) It shall be a condition applying in relation to a publication that is classified as a Category 1 restricted publication that -

- (a) the publication shall not be sold, let on hire or delivered to an infant (other than by a parent or guardian of the infant);

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- (b) the publication shall not be exhibited or displayed for sale or hire in a public place unless the publication is contained in a sealed package;
- (c) where the sealed package referred to in paragraph (b) is made of transparent material - the publication shall bear the prescribed markings; and
- (d) where the sealed package referred to in paragraph (b) is made of opaque material - both the publication and the package shall bear the prescribed markings.

(2) A video tape or video disc that is classified as a "G" film, a "PG" film or an "M" film shall not be exhibited or displayed in a public place unless the container, wrapping and casing in which the video tape or video disc is contained bear the prescribed markings.

(3) A publication -

- (a) that is classified as a Category 2 restricted publication; or
- (b) that is a film classified as an "R" or "X" film, shall not be -
- (c) sold, let on hire or delivered to an infant (other than by a parent or guardian of the infant);
- (d) exhibited or displayed, except in a restricted publications area;
- (e) sold, let on hire or exhibited, displayed or delivered for or on sale or hire unless the publication bears the prescribed markings;
- (f) delivered to a person who has not made a direct request for the publication; or
- (g) delivered to a person unless it is contained in a package made of plain opaque material.

### 37. REVOCATION OF CLASSIFICATION

(1) Subject to this section, the Board may, of its own motion or on application made under this section, revoke the classification of a publication (other than a film) or an action refusing to classify a publication (other than a film).

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(2) Subject to this section, the appeal censor may, of his own motion or on application made under this section, revoke the classification of a film or an action refusing to classify a film or the approval or an action refusing to approve advertising matter in relation to a film.

(3) An application under this section shall be -

(a) in writing signed by, or on behalf of, the applicant; and

(b) lodged with the Chairman or the appeal censor at any time later than 12 months after the date on which the classification, approval or action to which the application relates came into effect.

(4) The Board or the appeal censor shall not, of its or his own motion, revoke a classification, approval or action at any time before the expiration of 12 months after the date on which the classification or decision came into effect.

(5) The Board or the appeal censor shall not revoke a classification, approval or action unless it or he is satisfied that it is proper to do so, having regard to this Part relating to the classification of publications and the conditions applying to classified publications.

(6) Where the Board or the appeal censor, acting under this section, revokes a classification, approval or decision, it or he shall cause a notice of the revocation to be published in the *Gazette*.

### PART IV - OFFENCES

#### *Division 1 - Unclassified Publications*

#### 38. INTERPRETATION

In this Division -

"objectionable publication" does not include a Category 1 or Category 2 restricted publication, a film classified as an "R" film or an "X" film, or approved advertising matter in relation to a film;

"prescribed publication" means an objectionable publication of the kind referred to in paragraph (b) of the definition of "objectionable publication" in section 3.

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39. SALE, &c., OF OBJECTIONABLE PUBLICATIONS

(1) A person who advertises, or sells, offers for sale, lets on hire or distributes, an objectionable publication (other than a prescribed publication) is guilty of an offence.

Penalty: In the case of a body corporate - \$5,000.

In the case of an individual - \$1,000 or imprisonment for 6 months.

(2) A person who advertises, or sells, offers for sale, lets on hire or distributes, a prescribed publication is guilty of an offence.

Penalty: In the case of a body corporate - \$10,000.

In the case of an individual - \$2,000 or imprisonment for 12 months.

40. POSSESSION OF OBJECTIONABLE PUBLICATIONS

(1) A person who has in his possession an objectionable publication (other than a prescribed publication) for the purpose of selling or otherwise publishing it is guilty of an offence.

Penalty: In the case of a body corporate - \$5,000.

In the case of an individual - \$1,000 or imprisonment for 6 months.

(2) A person who has in his possession a prescribed publication for the purpose of selling or otherwise publishing it is guilty of an offence.

Penalty: In the case of a body corporate - \$10,000.

In the case of an individual - \$2,000 or imprisonment for 12 months.

41. KEEPING OBJECTIONABLE PUBLICATIONS AT PREMISES

(1) The occupier of land or premises who keeps or permits to be kept on that land or at those premises an objectionable publication (other than a prescribed publication) for the purpose of selling or otherwise publishing it is guilty of an offence.

Penalty: In the case of a body corporate - \$5,000.

In the case of an individual - \$1,000 or imprisonment for 6 months.

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(2) The occupier of land or premises who keeps or permits to be kept on that land or at those premises a prescribed publication for the purpose of selling or otherwise publishing it is guilty of an offence.

Penalty: In the case of a body corporate - \$10,000.

In the case of an individual - \$2,000 or imprisonment for 12 months.

### 42. PUBLISHING OBJECTIONABLE PUBLICATIONS IN PUBLIC PLACE

(1) A person who exhibits or displays an objectionable publication (other than a prescribed publication) in a public place, or in such a manner that it is visible to persons in or on a public place, is guilty of an offence.

Penalty: In the case of a body corporate - \$5,000.

In the case of an individual - \$1,000 or imprisonment for 6 months.

(2) A person who exhibits or displays a prescribed publication in a public place, or in such a manner that it is visible to persons in or on a public place, is guilty of an offence.

Penalty: In the case of a body corporate - \$10,000.

In the case of an individual - \$2,000 or imprisonment for 12 months.

### 43. DEPOSITING OBJECTIONABLE PUBLICATIONS IN PUBLIC PLACE

(1) A person who deposits, or causes to be deposited, an objectionable publication (other than a prescribed publication) in or on a public place or, except with the permission of the occupier, in or on private land or premises is guilty of an offence.

Penalty: In the case of a body corporate - \$5,000.

In the case of an individual - \$1,000 or imprisonment for 6 months.

(2) A person who deposits, or causes to be deposited, a prescribed publication in or on a public place or, except with the permission of the occupier, in or on private land or premises is guilty of an offence.

Penalty: In the case of a body corporate - \$10,000.

In the case of an individual - \$2,000 or imprisonment for 12 months.



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### 44. MAKING OBJECTIONABLE PUBLICATIONS

A person who prints or otherwise makes or produces a prescribed publication for the purpose of selling or otherwise publishing it is guilty of an offence.

Penalty: In the case of a body corporate - \$10,000.

In the case of an individual - \$2,000 or imprisonment for 12 months.

### 45. COURTS TO HAVE REGARD TO CERTAIN MATTERS

For the purpose of determining whether a publication (other than a publication that has been refused classification or advertising matter in relation to a film, being advertising matter that has been refused approval) is objectionable, the Court shall have regard to the general character of the publication.

### 46. EXEMPTION OF LITERARY, &c., WORKS

(1) The Court shall not find a publication to be objectionable if it possesses literary or artistic merit or is of a medical, legal or scientific character unless it is satisfied that the conduct of the person alleged to have committed an offence against this Division in relation to the publication was not justified in the circumstances, having regard, in particular, to the persons or classes of persons into whose hands the publication was intended or was likely to come.

(2) Sub-section (1) does not apply to or in relation to -

- (a) a publication that has been refused classification;
- (b) advertising matter in relation to a film, being advertising matter that has been refused approval; or
- (c) a publication that is of a kind referred to in paragraph (b) or (c) of the definition of "objectionable publication" in section 3.

### 47. SUBSEQUENT CLASSIFICATION OF PUBLICATIONS

A person shall not be convicted of an offence against this Division in relation to an objectionable publication, other than a video tape or video disc, if he establishes that -

- (a) since the offence was alleged to have been committed the publication has been classified under this Act; and

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- (b) the act alleged to constitute the offence did not infringe a condition (other than the conditions relating to prescribed markings) that would have been applicable to the publication had it been so classified at the time when the act was done.

48. OFFENCES RELATING TO UNCLASSIFIED PUBLICATIONS

A person shall not sell, offer for sale, let on hire or distribute a publication that is not a classified publication if the publication, or the container or wrapping in which the publication is sold, offered for sale, let on hire or distributed, bears a prescribed marking or other mark or matter that indicates that the publication is classified.

Penalty: In the case of a body corporate - \$2,500.

In the case of an individual - \$500 or imprisonment for 3 months.

*Division 2 - Classified Publications*

49. SALE, &c., OF CLASSIFIED PUBLICATIONS

(1) A person who advertises, or sells or otherwise publishes, a publication, being -

- (a) a Category 1 or a Category 2 restricted publication; or

- (b) a film classified as an "R" film or an "X" film, otherwise than in accordance with the conditions under this Act applicable to that publication, is guilty of an offence.

Penalty: In the case of a body corporate - \$2,500.

In the case of an individual - \$500 or imprisonment for 3 months.

(2) A person who deposits, or causes to be deposited -

- (a) a Category 1 or a Category 2 restricted publication; or

- (b) a film classified as an "R" film or an "X" film, in or on a public place or, except with the permission of the occupier, in or on private land or premises, is guilty of an offence.

Penalty: In the case of a body corporate - \$5,000.

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In the case of an individual - \$1,000 or imprisonment for 6 months.

(3) A person who exhibits or displays in a public place a video tape or video disc that is classified as a "G" film, a "PG" film or an "M" film and contained in a container, wrapping or casing that does not bear the marking prescribed in relation to that film for the purposes of section 36(2) is guilty of an offence.

Penalty: In the case of a body corporate - \$1,000.

In the case of an individual - \$200.

### 50. OFFENCES RELATING TO RESTRICTED PUBLICATIONS AREA

(1) A person who is in charge of, or who has the management or control of, a restricted publications area shall not permit an infant to enter that area.

(2) A person who is in charge of a restricted publications area shall cause to be displayed in a prominent place on or near each entrance to the area and so that it is clearly visible from outside the area, a prescribed notice.

(3) A person who is in charge of, or who has the management or control of, a restricted publications area shall not, in that area, screen, or cause or permit to be screened, a film that is classified as an "R" film or an "X" film, other than on a screen having dimensions of or less than those prescribed or by means of a slot-machine operated by a coin or token.

(4) A person who contravenes or fails to comply with this section is guilty of an offence.

Penalty: In the case of a body corporate - \$2,500.

In the case of an individual - \$500 or imprisonment for 3 months.

(5) It is a defence to a prosecution for an offence against sub-section (1) that the accused believed, on reasonable grounds, that the person in relation to whom the offence is alleged to have been committed was an adult.

## *Division 3 - Sexual Articles*

### 51. DEFINITION

In this Division, "sexual article" means an article, material or compound, preparation, device or other thing, whether of the same or a different kind or nature, that is primarily concerned with or is used or intended to be

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used in connection with sexual behaviour, but does not include a publication.

### 52. DISPLAY OF SEXUAL ARTICLES

(1) A person who carries on or manages a business an object of which is the sale or distribution of sexual articles, or an employee of such a person, shall not -

- (a) display the sexual article;
- (b) permit a sexual article to be displayed; or
- (c) place or leave a sexual article in such a position that it can readily be seen by persons,

in a public place.

(2) It is a defence to a prosecution for an offence against sub-section (1) that the display of the sexual article was only to a person who requested that the article be displayed to him or consented to the display to him of the article.

(3) It is a defence to a prosecution for an offence against sub-section (1) that -

- (a) the defendant carried on or managed, at the time of the commission of the offence, a prescribed business;
- (b) the business was being carried on in accordance with the prescribed conditions, if any; and
- (c) the display, permitting, placing or leaving constituting the offence was done only as part of the carrying on of that business.

### 53. ADVERTISING SEXUAL ARTICLES

(1) A person who carries on or manages a business an object of which is the sale or distribution of sexual articles, or an employee of such a person, shall not advertise, attempt to advertise or counsel or procure a person to advertise in any manner the nature of that object of the business.

(2) It is a defence to a prosecution for an offence against sub-section (1) that the object of the business was made known only to a person or the employee of a person who carries on a business or practises a profession ordinarily involving the sale or distribution of sexual articles.

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(3) It is a defence to a prosecution for an offence against sub-section (1) that -

- (a) the defendant carried on or managed, at the time of the commission of the offence, a prescribed business;
- (b) the business was being carried on in accordance with the prescribed conditions, if any, in relation to that business; and
- (c) the advertising, attempt, counselling or procuring constituting the offence was done only as part of the carrying on of the business.

54. PENALTY

A person who contravenes or fails to comply with section 52 or 53 is guilty of an offence.

Penalty: In the case of a body corporate -

for a first offence - \$2,500;

for a second or subsequent offence - \$5,000.

In the case of an individual -

for a first offence - \$1,000 or imprisonment for 6 months;

for a second or subsequent offence - \$2,000 or imprisonment for 12 months.

*Division 4 - Miscellaneous*

55. OFFENCES RELATING TO FILMS

(1) A person shall not sell, offer for sale, let on hire or distribute a film (other than a video tape or video disc) that is classified as a "G" film, a "PG" film or an "M" film, if the film, or the container or wrapping in which the film is sold, offered for sale, let on hire or distributed, bears a mark or other matter that indicates that the film is not so classified or is differently classified.

(2) A person shall not sell, offer for sale, let on hire or distribute a film (whether or not the film is classified) in association with advertising matter that has been refused approval.

(3) A person shall not publish approved advertising matter in relation to a film other than in accordance with the conditions, if any, to which the approval is subject.

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(4) A person who contravenes this section is guilty of an offence.

Penalty: In the case of a body corporate - \$2,500.

In the case of an individual - \$500 or imprisonment for 3 months.

56. OFFENCES RELATING TO VIDEO TAPES

(1) A person who sells, offers for sale, lets on hire or distributes a video tape or video disc that has not been classified or that has been refused classification is guilty of an offence.

Penalty: In the case of a body corporate - \$10,000.

In the case of an individual - \$2,000 or imprisonment for 12 months.

(2) A person who advertises a video tape or video disc that is not classified or that has been refused classification is guilty of an offence.

Penalty: In the case of a body corporate - \$500.

In the case of an individual - \$100.

(3) A person who publishes advertising matter in relation to a video tape or video disc, being advertising matter that falsely indicates -

(a) in the case of a video tape or video disc that is unclassified or has been refused classification - that the tape or disc is classified; or

(b) in the case of a classified video tape or video disc - that the tape or disc is not so classified or is differently classified,

is guilty of an offence.

Penalty: In the case of a body corporate - \$500.

In the case of an individual - \$100.

(4) Proceedings for an offence against sub-section (1) in relation to a video tape or video disc that is unclassified at the time of the alleged offence shall not be instituted until the video tape or video disc has been classified or refused classification.

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PART V - SEARCH, SEIZURE AND FORFEITURE

57. INTERPRETATION

(1) For the purposes of this Part, a thing is connected with an offence if it is a thing -

- (a) in relation to which the offence has been committed;
- (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 shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or is about to be, committed.

58. SEARCH AND SEIZURE

A member of the Police Force may enter on land, or on or into premises, and may search for and seize a thing that he 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 member of the Police Force -

- (a) in pursuance of 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.

59. CONSENT TO SEARCH

(1) Before obtaining the consent of a person for the purpose of section 58, a member of the Police Force shall inform the person that he may refuse to give his consent.

(2) A member of the Police Force who obtains the consent of a person for the purposes of section 58 shall ask the person to sign an acknowledgement of -

- (a) the fact that he has been informed that he may refuse to give his consent;
- (b) the fact that he has voluntarily given his consent; and
- (c) the date on which, and the time at which, he gave his consent.

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(3) Where it is material, in any proceedings, for the Court to be satisfied of the voluntary consent of a person for the purposes of section 58 and an acknowledgement, in accordance with sub-section (2), signed by the person has not been produced in evidence, the Court shall assume, unless the contrary is proved, that the person did not voluntarily give his consent.

### 60. FORFEITURE AND RETURN OF PUBLICATIONS

(1) Where a person is convicted of an offence against this Act in relation to an objectionable publication, the Court may order the publication to be forfeited to the Territory.

(2) Where a person is charged with an offence against this Act but the Court is not satisfied that he has committed the offence with which he is charged, it shall order that any publication to which the prosecution relates that has been seized as an objectionable publication be delivered to the person appearing to the Court to have been entitled to possession of the publication immediately before the seizure.

(3) Where a publication has been lawfully seized by a member of the Police Force as an objectionable publication but no person has been charged with an offence against this Act in respect of that publication, a magistrate shall, on the application of a member of the Police Force made within 14 days after the seizure of the publication, issue a summons requiring the occupier of the land or premises from which the publication was seized, or the person from whom it was seized, or both, as the magistrate thinks fit, to appear before the Court and show cause why the publication seized should not be forfeited to the Territory.

(4) Where a magistrate issues a summons under sub-section (3) in relation to a publication, he shall, so far as he considers it reasonably practicable to do so, cause notice of the proceedings to be given to every person whose name appears on the publication as the author, publisher, printer, manufacturer or owner of the publication.

(5) In proceedings under this section, the Court may permit a person who claims to be the author, publisher, printer, manufacturer or owner of the publication to which the proceedings relate (whether or not a notice has been given to him under sub-section (4)) and who appears or is represented in the proceedings, to intervene in the proceedings for the purpose of maintaining that the publication is not objectionable.

(6) On the hearing of the summons issued under sub-section (3), the Court shall -



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- (a) if it is satisfied that there was a contravention of a provision of this Act in respect of the publication and that it is desirable to do so - order the publication to be forfeited to the Territory; or
- (b) if it is not so satisfied - order that the publication be delivered to the person appearing to the Court to have been entitled to possession of the publication immediately before its seizure.

(7) Where a publication has been lawfully seized by a member of the Police Force as an objectionable publication and, at the expiration of 14 days after the seizure -

- (a) no person has been charged with an offence against this Act in respect of the publication; and
- (b) a summons has not been issued under sub-section (3) in respect of the publication,

the publication shall be returned to the person from whom, or to the occupier or person in charge of the land or premises from which, it was seized.

(8) Subject to sub-section (9), a publication forfeited to the Territory under this section may be destroyed or otherwise dealt with, as directed by the Minister.

(9) Where the Court has ordered a publication to be forfeited to the Territory, the Minister shall not direct the destruction of the publication 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 VI - MISCELLANEOUS

### 61. EXEMPTIONS

(1) The Minister may, by notice in the *Gazette*, exempt a person or body specified in the notice from such of the provisions of this Act, and subject to such conditions, if any, as are specified in the notice.

(2) Notwithstanding anything in this Act, it is not an offence for a person to -

- (a) publish to a prescribed person or body a Category 1 or a Category 2 restricted publication or a film classified as an "R" film or an "X" film;

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- (b) publish to a prescribed person or body a video tape or video disc that is unclassified or that has been refused classification; or
- (c) do an act or thing that falls within the scope of an exemption under sub-section (1) and that is done in accordance with the conditions, if any, to which that exemption is subject.

### 62. AUTHORITY TO PROSECUTE

Proceedings for an offence against this Act shall not be instituted except with the written consent of the Minister.

### 63. LIABILITY FOR OFFENCE BY BODY CORPORATE

(1) Where a body corporate commits an offence against this Act -

- (a) the person who, at the time the offence was committed, was the manager or other governing officer by whatever name called, or a member of the governing body by whatever name called, of the body corporate; and
- (b) a person who, at the time the offence was committed, managed or acted or took part in the management, administration or governing of the business in the Territory of the body corporate,

shall each be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly.

(2) This section applies so as not to limit or affect in any way the liability of a body corporate to be proceeded against and punished for an offence against this Act committed by it.

(3) It shall be a defence to a prosecution for an offence against this Act brought against a person specified in sub-section (1) if the person charged with the offence proves that the offence was committed without his consent or connivance and that he exercised due diligence to prevent the commission of the offence.

### 64. EVIDENCE

(1) In proceedings for an offence against this Act, a copy of a Gazette in which is published a notice purporting to be a notice under section 21(1) or 31(1) is prima facie evidence of the matters stated in the notice.

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(2) In proceedings for an offence against this Act, a certificate signed or purporting to be signed by the Censor stating that a film specified in that certificate has not been classified or that advertising material in relation to a film has not been approved is prima facie evidence of that fact.

### 65. 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 him personally;
- (b) sending it to him by post addressed to him at his last known place of residence or business; or
- (c) leaving it at his 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.

### 66. 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) Without limiting the generality of sub-section (1), the Regulations may prescribe -

- (a) penalties for offences against the Regulations, being penalties not exceeding \$1,000 in the case of a body corporate and not exceeding \$200 in the case of an individual;
- (b) requirements in relation to the construction, conduct and management of restricted publications areas; and
- (c) fees for any matter under this Act and arrangements for the collection and apportionment, if necessary, between the Commonwealth and the Territory of fees referred to in section 27(3) or 32(3).

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PART VII - REPEAL AND TRANSITIONAL

67. 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.

68. TRANSITIONAL

(1) The Acts repealed by section 67 shall 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 the purposes of 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 by virtue of sub-section (1).
-