

# THE NORTHERN TERRITORY OF AUSTRALIA

No. 135 of 1979

## AN ACT

To control the publication and distribution  
of certain articles

[Assented to 7 November 1979]

**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:

- |   |                |
|---|----------------|
| 1. This Act may be cited as the <u>Classification of Publications Act 1979</u> .  | Short title    |
| 2. This Act shall come into operation on a date to be fixed by the Administrator by notice in the <u>Gazette</u> .  | Commencement   |
| 3. This Act does not apply to or in relation to a prescribed library.   | Application    |
| 4.(1) In this Act, unless the contrary intention appears -  | Interpretation |
| "application" means an application under section 20;  |                |
| "Board" means the Publications Classification Board constituted under section 7;  |                |
| "child pornography publication" means a publication classified as a child pornography publication;  |                |
| "classified publication" means a publication classified as a child pornography publication, a direct sale publication, a restricted publication or an unrestricted publication; |                |
| "classifying authority" means a Magistrate sitting as a Local Court under this Act, the Board or a classifying officer;   |                |
| "classifying officer" means a person appointed as a classifying officer under section 6;  |                |
| "direct sale publication" means a publication classified as a direct sale publication;  |                |

## Classification of Publications

"employee" means an employee within the meaning of the Public Service Act;

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

"member" means a member of the Board;

"public place" means any place to which members of the public are ordinarily admitted, whether on payment of a fee or not, and includes a shop;

"publication" includes -

- (a) a book, newspaper, magazine, pamphlet or periodical;
- (b) anything that contains or embodies matter to be read or looked at or both;
- (c) a record or videotape;
- (d) anything that may be used for the manufacture of anything referred to in paragraph (a), (b) or (c); and
- (e) a copy of a publication, however produced;

"restricted publication" means a publication classified as a restricted publication;

"unrestricted publication" means a publication classified as an unrestricted publication.

(2) For the purposes of this Act, a person publishes a publication if he -

- (a) distributes, disseminates, circulates, delivers, sends, lends for gain, exchanges, barter, sells, offers for sale, lets on hire or offers to let on hire;
- (b) has in his custody, possession or control for the purpose of doing an act referred to in paragraph (a) or enabling such an act to be done; or
- (c) prints, photographs or copies in any other manner, whether of the same or of a different kind or nature for the purpose of doing an act

## Classification of Publications

referred to in paragraph (a) or enabling such an act to be done,

the publication.

(3) For the purposes of this Act, a person publishes -

(a) a positive or negative photograph if he publishes a positive or negative picture made from the photograph in a form visible by reflected or transmitted light or if he makes it available for use in making such a picture; and

(b) a record if he publishes the sound or picture recorded thereon, whether or not in an altered or distorted form.

(4) A person in the Territory publishes a publication notwithstanding that the person to whom the publication is published is not in the Territory.

(5) A publication may be indecent notwithstanding that part of it is not indecent.

### PART II - ADMINISTRATION

5. 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 classifying officer.

Arrangements

6.(1) The Minister may appoint an employee to be a classifying officer.

Classifying officers

(2) The Minister may, in accordance with any arrangement entered into under section 5, appoint an officer of the Public Service of or a person otherwise employed by the Commonwealth to be a classifying officer.

7. There shall be a Board constituted in accordance with this Part which shall be known as the Publications Classification Board.

Board

8. Subject to this Act, the Minister may appoint a person to be a member.

Members

9.(1) Subject to this section, the Board consists of 5 members.

Qualifications of members

Classification of Publications

(2) Not less than one member shall be a man.

(3) Not less than one member shall be a woman.

(4) Not less than one member shall have qualifications in literature, art or education, satisfactory to the Minister.

(5) Not less than one member shall be a legal practitioner.

Vacancy not  
to invalidate

10. The performance of a function or the exercise of a power by the Board is not invalid by reason only of there being a vacancy in the membership of the Board.

Temporary  
vacancies

11.(1) Where -

(a) there is, or is expected to be, a vacancy in the office of a member; or

(b) a member is, or is expected to be, absent or unable to act,

the Minister may, by instrument in writing, authorize a person to act in the office of that member.

(2) The power of the Minister under sub-section (1) includes the power to authorize a person to act in the office of a member from time to time during the absence or inability to act of the member.

(3) This Act applies to and in respect of a person who is authorized under this section to act in an office, while he is so acting, as though he were the holder of that office.

Chairman,  
&c.

12. The Minister shall appoint -

(a) a member to be Chairman; and

(b) a member to be Deputy Chairman.

Appointments

13. An appointment under section 6, 8 or 12 shall be notified in the Gazette and shall take effect from -

(a) the date of publication of the notification; or

(b) if there is a later date specified in the notification - that later date.

Term of  
office

14. Subject to this Act, a member holds office for 3 years but is eligible for reappointment.

## Classification of Publications

15.(1) The Minister may remove a member from office if the member is, in the opinion of the Minister, guilty of misbehaviour or incompetence.

Removal  
from office

(2) The Minister shall remove a member from office if the member -

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or

(b) is of unsound mind.

(3) A member may resign his office by writing under his hand delivered to the Minister.

16. Subject to this Act, members (employees excepted) shall be paid, in respect of their services as members, such fees, allowances and expenses, and at such rates, as the Administrator may determine.

Fees, &c.

17.(1) At a meeting of the Board 4 members form a quorum.

Procedure

(2) At a meeting of the Board -

(a) all questions shall be decided by a majority of the votes of the members present;

(b) the Chairman or, if he is not present, the Deputy Chairman shall preside; and

(c) the Chairman or if he is not present, the Deputy Chairman, has a deliberate vote and, in the event of an equality of votes, also has a casting vote.

18. A member or person acting with the authority of the Board is not personally liable in respect of any matter or thing done -

Protection

(a) by the Board; or

(b) by that person,

if the matter or thing was done bona fide for the purpose of executing this Act or any other Act conferring or imposing functions on the Board.

19.(1) The Board shall, not later than 31 December in any year, report to the Minister on the operation of this Act during the previous year.

Reports

## Classification of Publications

(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

Applications            20.(1) The Minister may apply to a classifying officer for the classification of a publication.

(2) A person who proposes to publish a publication may apply to a classifying officer for the classification of the publication.

Determination of applications            21.(1) Subject to this Act, a classifying authority shall determine an application in respect of a publication -

- (a) if the publication is in the opinion of the classifying authority indecent and depicts a child under or apparently under the age of 16 years who is engaged in sexual activity or is in the presence of a person so engaged - by classifying the publication as a child pornography publication; or
- (b) if the publication does not depict a child under or apparently under the age of 16 years in the manner referred to in paragraph (a) -
  - (i) and, in the opinion of the classifying authority, the display and publication of the publication should be subject to the restrictions imposed by Division 2 of Part IV - by classifying the publication as a direct sale publication;
  - (ii) and, in the opinion of the classifying authority, the display and publication of the publication should be subject to the restrictions imposed by Division 3 of Part IV - by classifying the publication as a restricted publication;
  - (iii) and, in the opinion of the classifying authority, the display and publication of the publication should not be restricted - by classifying the publication as an unrestricted publication; or

## Classification of Publications

(iv) by refusing to classify the publication.

(2) In considering a publication for the purposes of sub-section (1), a classifying authority other than a classifying officer appointed under section 6(2) shall -

- (a) take into account the standards of morality, decency and propriety that are generally accepted by reasonable adult persons resident in the Territory;
- (b) accept the principle that adult persons are entitled to read and view what they wish; and
- (c) accept the principle that members of the community are entitled to protection, extending both to themselves and those in their care, from exposure to unsolicited material that they find offensive,

and in a case where the application of the principles referred to in paragraphs (b) and (c) would lead to conflicting conclusions, shall exercise its powers in a manner that will, in the opinion of the classifying authority, achieve a reasonable balance in the application of those principles but so that the result does not, in any case, offend the standards referred to in paragraph (a).

22.(1) A classifying authority may, in determining an application in respect of a publication by classifying the publication, direct that the classification extend to all subsequent editions, instalments or numbers of the publication.

Subsequent  
editions, &c.

(2) Where a direction under sub-section (1) is given in respect of a publication, all subsequent editions, instalments or numbers of the publication shall, notwithstanding any reconstruction or alteration of the publication in any material particular, be deemed to have the same classification as the publication.

(3) A direction under sub-section (1) does not prevent a classifying authority from determining an application in respect of a subsequent edition, instalment or number of the publication in respect of which the direction was given.

23. A classifying authority which determines an application shall give written notice of the determination to the applicant.

Notice of  
determination

## Classification of Publications

Effects of determinations 24.(1) Subject to sub-section (2), the determination of an application is of no effect unless and until the Minister publishes the determination in the Gazette.

(2) A determination that a publication be classified as a child pornography publication takes effect from -

(a) the date of service of the notice of determination under section 23; or

(b) the date of publication of the determination under sub-section (1),

whichever is the earlier.

(3) The Minister shall, within 10 days of receiving notice of a determination by a Magistrate of an application by classifying a publication, publish the determination in the Gazette.

Review 25. A person who objects to a determination of a classifying authority may, within 14 days of the determination's coming into effect -

(a) if the classifying authority is a classifying officer - apply to the Board; or

(b) if the classifying authority is the Board - apply to a Magistrate sitting as a Local Court,

for the classification of the publication.

Inconsistent classifications 26. The classification of a publication revokes, to the extent of any inconsistency, any earlier classification of the publication.

### PART IV - CONTROL OF PUBLICATIONS AND ARTICLES

#### Division 1 - Prohibited Publications

Prohibited publications

27.(1) No person shall -

(a) display;

(b) publish; or

(c) have in his possession,

a child pornography publication.



Classification of Publications

(2) A person convicted of an offence against sub-section (1) is liable to a penalty not exceeding -

- (a) if the person is a body corporate -
  - (i) for the first offence - \$2,000; and
  - (ii) for a second or subsequent offence - \$4,000; or
- (b) if the person is not a body corporate -
  - (i) for a first offence - \$1,000 or imprisonment for 12 months; and
  - (ii) for a second or subsequent offence - \$2,000 or imprisonment for 3 years.

Division 2 - Direct Sale Publications

28. No person shall -

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

in a public place.

29.(1) Subject to sub-section (2), no person shall publish a direct sale publication.

(2) A person who is not an infant shall not be held to have contravened sub-section (1) by reason only that he publishes a direct sale publication to or to an employee of another such person whose business is or includes publishing publications where the publication is or is intended to be for use in the business of that last-mentioned person, in so far as that business involves the publishing of publications.

(3) It is a defence to a prosecution for an offence against sub-section (1) that the act of publishing the direct sale publication was the act of selling a single copy of the publication marked and wrapped in the prescribed manner in a shop to one person only who -

- (a) is not an infant; and
- (b) had made an unsolicited request for a single copy of the publication.

Display of  
direct sale  
publications

Publication of  
direct sale  
publications

Classification of Publications

Penalty                    30. A person convicted of an offence against section 28 or 29 is liable to a penalty not exceeding -

- (a) if the person is a body corporate -
  - (i) for a first offence - \$1,000; and
  - (ii) for a second or subsequent offence - \$2,000; or
- (b) if the person is not a body corporate -
  - (i) for a first offence - \$500 or imprisonment for 6 months; and
  - (ii) for a second or subsequent offence - \$1,000 or imprisonment for 12 months.

Division 3 - Restricted Publications

Display of  
restricted  
publications

31.(1) No person shall -

- (a) display a restricted publication;
- (b) permit a restricted publication to be displayed; or
- (c) place or leave a restricted publication 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 -

- (a) the person charged took such precautions as were necessary to prevent the restricted publication's being displayed to or seen by an infant; and
- (b) where the restricted publication was in fact displayed to or seen by a person who was an infant, the person charged had reasonable grounds for believing and did in fact believe that the person was not an infant.

Publication of  
restricted  
publications

32.(1) No person shall publish a restricted publication -

- (a) to an infant; or
- (b) unless the publication, when published, was marked and wrapped in the prescribed manner.

Classification of Publications

(2) It is a defence to a prosecution for an offence against sub-section (1)(a) that the person charged had reasonable grounds to believe and did in fact believe that the person to whom the restricted publication was published was not an infant.

33. A person convicted of an offence against section 31 or 32 is liable to a penalty not exceeding - Penalty

- (a) if the person is a body corporate -
  - (i) for a first offence - \$500; and
  - (ii) for a second or subsequent offence - \$1,000; or
- (b) if the person is not a body corporate -
  - (i) for a first offence - \$250 or imprisonment for 3 months; and
  - (ii) for a second or subsequent offence - \$500 or imprisonment for 6 months.

Division 4 - Indecent Publications

34. No person shall -

- (a) display an indecent publication;
- (b) permit an indecent publication to be displayed;
- (c) place or leave an indecent publication in such a position that it can readily be seen by persons; or
- (d) have an indecent publication in his possession apparently for the purpose of displaying it, placing or leaving it in such a position that it can readily be seen by persons,

Display of  
indecent  
publications

in a public place.

35.(1) No person shall -

- (a) publish; or
- (b) have in his possession apparently for the purpose of publishing,

Publication  
of indecent  
publications

an indecent publication.

## Classification of Publications

Defence                    36. It is a defence to a prosecution for an offence against section 34 or 35 that -

- (a) the publication was a classified publication; and
- (b) the display, publishing or possession, as the case may be, of the publication, was done in accordance with the provisions of this Act and the regulations.

Penalty                    37. A person convicted of an offence against section 34 or 35 is liable to a penalty not exceeding -

- (a) if the person is a body corporate -
  - (i) for a first offence - \$2,000; and
  - (ii) for a second or subsequent offence - \$4,000; or
- (b) if the person is not a body corporate -
  - (i) for a first offence - \$1,000 or imprisonment for 12 months; or
  - (ii) for a second or subsequent offence - \$2,000 or imprisonment for 2 years.

### Division 5 - Sexual Articles

Definition                38. In this Division, "sexual article" means article, material, 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 used in connection with sexual behaviour, but does not include a publication.

Display of sexual articles        39.(1) A person who carries on or manages a business an object of which is the sale or distribution of sexual articles shall not -

- (a) display a 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

## Classification of Publications

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

40.(1) No person who carries on or manages a business an object of which is the sale or distribution of sexual articles, and no employee of such a person, shall advertise, attempt to advertise or counsel or procure a person to advertise in any manner the nature of that object of the business.

Advertising  
of sexual  
articles

(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.

(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 such conditions as are prescribed 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 that business.

41. A person convicted of an offence against section 39 or 40 is liable to a penalty not exceeding - Penalty

Classification of Publications

- (a) if the person is a body corporate -
  - (i) for a first offence - \$1,000; and
  - (ii) for a second or subsequent offence - \$2,000; or
- (b) if the person is not a body corporate -
  - (i) for a first offence - \$500 or imprisonment for 6 months; and
  - (ii) for a second or subsequent offence - \$1,000 or imprisonment for 12 months.

Division 6 - Advertising

Advertising

42.(1) No person shall publish any publication which informs or by which a person may be informed whether by implication or otherwise -

- (a) that an identifiable publication is a classified publication; or
- (b) that an identifiable place or person may be resorted to for the purpose of obtaining a classified publication whether or not the publication is identifiable.

(2) Sub-section (1)(a) does not apply to or in relation to a notice published in the Gazette.

(3) It is a defence to a prosecution for an offence against sub-section (1) that the publication of the publication referred to in that sub-section took place in a part of a shop constructed, set aside and marked in the prescribed manner.

(4) A person convicted of an offence against sub-section (1) is liable to a penalty not exceeding -

- (a) if the person is a body corporate -
  - (i) for a first offence - \$500; or
  - (ii) for a second or subsequent offence - \$1,000; or
- (b) if the person is not a body corporate -
  - (i) for a first offence - \$250 or imprisonment for 3 months; and

## Classification of Publications

- (ii) for a second or subsequent offence - \$500 or imprisonment for 6 months.

### PART V - ENFORCEMENT

43. In this Part, the expression "a thing connected with an offence" has the meaning ascribed thereto in Part VII of the Police Administration Act.

Definition

44.(1) Subject to sub-section (2), a thing connected with an offence against this Act lawfully seized by a member of the Police Force shall, if the owner of the thing so requests, be returned to the person or place from whom or from which it was so seized at the expiration of 30 days from the date of seizure.

Disposition of things seized

(2) A thing referred to in sub-section (1) shall not be returned to a person in pursuance of that sub-section if proceedings in respect of the offence have been instituted before the expiration of the 30 days so referred to -

- (a) if the offence is found proved; or  
(b) if the offence is not found proved - until the proceedings have been completed.

45. A thing connected with an offence against this Act which has been lawfully seized by a member of the Police Force shall -

Certain things forfeited to Crown

- (a) if the owner of the thing does not request its return pursuant to sub-section (1); or  
(b) if the offence is found proved,

be forfeited to the Crown.

46. A thing connected with an offence against this Act which is forfeited to the Crown shall be destroyed.

Destruction of things seized

### PART VI - MISCELLANEOUS

47. An offence against this Act is punishable on summary conviction.

Summary conviction

48. Where a body corporate is convicted of an offence against this Act, every person who was, at the time of the offence, an officer within the meaning of the Companies Act, of the body corporate shall be guilty of the like offence unless he satisfies the court that -

Bodies corporate

Classification of Publications

- (a) the offence was committed without his knowledge; or
- (b) he used all due diligence to prevent the commission of the offence.

Expert  
evidence

49. In any proceedings in which the indecency of a publication is in issue, the opinion of a person who has the prescribed qualification and experience in the fields of literature, art, medicine or science as to the merit or otherwise of the publication is admissible evidence.

Certain  
publications  
not an  
offence

50. A person shall not be held to have committed an offence against a provision of Part IV by reason only that he publishes a publication for the purposes of an application.

Contract

51. A person shall not be held to be liable for a breach of any contract by reason only of his rejection of an article delivered to him in pursuance of the contract or refusing to accept such an article if -

- (a) the article is not a classified publication and he believes that acceptance of the article in pursuance of the contract would render him liable to be prosecuted for publishing an obscene or blasphemous libel or for an offence against this Act; and
- (b) he gives written notice to the other party to the contract of his reasons for so doing as soon after the rejection or refusal to accept as is practicable.

Regulations

52. The Administrator may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed by this Act or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.