

South Australia



ANNO QUINQUAGESIMO  
ELIZABETHAE II REGINAE  
A.D. 2001

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)  
(MISCELLANEOUS NO. 2) AMENDMENT ACT 2001**

No. 60 of 2001

[Assented to 6 December 2001]

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An Act to amend the Classification (Publications, Films and Computer Games)  
Act 1995.

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The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Classification (Publications, Films and Computer Games) (Miscellaneous No. 2) Amendment Act 2001*.

(2) The *Classification (Publications, Films and Computer Games) Act 1995* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Amendment of s. 4—Interpretation**

3. Section 4 of the principal Act is amended—

(a) by inserting in paragraph (a) of the definition of "consumer advice" "publication," before "film";

(b) by inserting in paragraph (b) of the definition of "consumer advice" "publication," before "film" (twice occurring);

(c) by inserting after the definition of "determined markings" the following definitions:

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

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

(d) by inserting after the definition of "guardian" the following definitions:

"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;;

(e) by inserting after the definition of "National Director" the following definition:

"National Review Board" means the Classification Review Board established by the Commonwealth Act;;

(f) by inserting in the definition of "place" "(except a vessel on an international voyage or an aircraft on an international flight)" after "aircraft";

(g) by inserting in the definition of "submittable publication" "the Council or the Minister under Part 3 or" after "called in by".

**Substitution of s. 6**

4. Section 6 of the principal Act is repealed and the following section is substituted:

**Application of Act**

6. This Act does not apply to—

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

**Amendment of s. 14—Powers**

5. Section 14 of the principal Act is amended by striking out from subsection (1)(c)(iii) "a publication, film or computer game or".

**Substitution of s. 19A**

6. Section 19A of the principal Act is repealed and the following sections are substituted:

**Classification of publication forming part of a series**

19A. (1) Where a publication under consideration by the Council or the Minister consists of an issue or instalment of a series of publications that are issued periodically or by instalment, the Council or the Minister (as the case may be) may declare that the classification granted to that publication applies also to—

- (a) all future publications of the same series; or
- (b) a specified number of future publications of the same series; or
- (c) all future publications of the same series published within a specified period.

(2) If the Council or the Minister makes a declaration under this section for some or all future publications of the same series and the Council or the Minister (as the case may be) is of the opinion that a publication covered by the declaration—

- (a) contains material that, if the publication were being classified separately, would cause it to be classified with a higher classification than the original issue; or
- (b) contains an advertisement that has been refused approval under this Act or the Commonwealth Act,

the Council or the Minister (as the case may be) must revoke the declaration so far as it affects that publication and any future publications of the same series.

(3) If a declaration is revoked under this section in relation to a publication and to any future publications of the same series, the Council must also revoke approval of any advertisement for those publications that has been approved under this Act.

**Conditions of certain classifications for publications**

19B. (1) If the Council or the Minister classifies a publication Unrestricted, the Council or the Minister (as the case may be) may impose a condition that the publication not be sold, displayed for sale or delivered unless it is contained in a sealed package.

(2) If the Council or the Minister classifies a publication Category 1 restricted, the Council or the Minister (as the case may be) may impose a condition that the publication not be sold, displayed for sale or delivered unless it is contained in a sealed package made of plain, opaque material.

**Amendment of s. 20—Considered form of publication, film or computer game to be final**

7. Section 20 of the principal Act is amended by inserting in subsection (1) "publication," before "film" (twice occurring).

**Amendment of s. 21—Consumer advice for publications, films and computer games**

8. Section 21 of the principal Act is amended by inserting in subsections (1) and (2) "publication," before "film" (wherever occurring).

**Insertion of s. 23A**

9. The following section is inserted after section 23 of the principal Act:

**Revocation of classification of films or computer games that are found to contain contentious material**

23A. (1) If the Council or the Minister is of the opinion that—

- (a) a film or computer game that is classified under this Act contains contentious material (whether activated through use of a code or otherwise) that was not brought to the attention of the Council or the Minister (as the case may require) before the classification was made; and
- (b) if the Council or the Minister (as the case may require) had been aware of the material before the classification was made, it would have given the film or computer game a different classification,

the Council or the Minister (as the case may require) must revoke the classification.

(2) If a classification is revoked under this section in relation to a film or computer game, the Council must also revoke approval of any advertisement for the film or computer game under this Act.

**Insertion of s. 24A**

10. The following section is inserted in Division 2 of Part 3 after section 24:

**Calling in publications, films and computer games**

24A. (1) If a publication, film or computer game is being published in South Australia or the Council or the Minister has reasonable grounds to believe that it will be published in South Australia, the Council or the Minister (as the case may require) may, by notice in writing given to the publisher of the publication, film or computer game, require the publisher to submit to the Council or the Minister—

- (a) a copy of the publication, film or computer game; and
- (b) in the case of a computer game any part of which is likely to be regarded as containing contentious material—
  - (i) particulars of that material and of the means by which access to it may be gained; or

- (ii) a separate recording of that material,

for the purpose of classifying or reclassifying the publication, film or computer game or determining whether the publication, film or computer game should be classified or reclassified.

(2) A notice given by the Council under subsection (1) must be signed by the Registrar or a Council member on behalf of the Council.

(3) The Council or the Minister (as the case may require) must cause notice of a decision under subsection (1) to be published in the *Gazette*.

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

Maximum penalty: \$5 000.

Expiation fee: \$315.

(5) It is a defence to a prosecution for an offence against subsection (4) to prove that—

(a) the defendant did not intend—

(i) to publish the publication, film or computer game in South Australia; or

(ii) to cause, authorise, permit or license the publication, film or computer game to be published in South Australia; or

(b) in the case of a publication, film or computer game that was classified at the time at which the notice was given—the defendant did not have a copy of the publication, film or computer game.

**Amendment of s. 27—Calling in advertisements**

11. Section 27 of the principal Act is amended by striking out the penalty provision at the foot of subsection (2) and substituting the following:

Maximum penalty: \$5 000.

Expiation fee: \$315.

**Amendment of s. 40—Films to bear determined markings and consumer advice**

12. Section 40 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) If—

(a) a film is reclassified under this Act or the Commonwealth Act; or

- (b) a classification or consumer advice for a film is revoked under this Act or 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.

**Amendment of s. 47—Category 1 restricted publications**

13. Section 47 of the principal Act is amended—

- (a) by striking out paragraphs (a) and (b) of subsection (1) and substituting the following paragraphs:

(a) the publication—

(i) is contained in a sealed package made of opaque material; or

(ii) subject to any condition imposed by the National Board under the Commonwealth Act or by the Council or the Minister under this Act—is sold and delivered in a restricted publications area and is, at the time of being delivered, contained in a package made of opaque material; and

(b) both the publication and the package bear the determined markings.;

- (b) by striking out subsection (2) and substituting the following subsection:

(2) If—

(a) a publication is reclassified under this Act or the Commonwealth Act; or

(b) a classification for a publication is revoked under this Act or the Commonwealth Act,

it is sufficient compliance with subsection (1)(b) 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.

**Amendment of s. 48—Category 2 restricted publications**

14. Section 48 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) If—

(a) a publication is reclassified under this Act or the Commonwealth Act; or

(b) a classification for a publication is revoked under this Act or the Commonwealth Act,

it is sufficient compliance with subsection (2a)(b) 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.

**Insertion of ss. 48A and 48B**

15. The following sections are inserted after section 48 of the principal Act:

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

**48A.** If a publication is classified Unrestricted or Category 1 restricted subject to a condition imposed under this Act or the Commonwealth Act, a person must not sell or deliver the publication except in accordance with that condition.

Maximum penalty: \$5 000.

Expiation fee: \$315.

**Consumer advice for publications**

**48B.** A person must not sell a publication unless the relevant consumer advice, if any, is displayed on the publication or the packaging of the publication.

Maximum penalty: \$750.

Expiation fee: \$105.

**Amendment of s. 50—Misleading or deceptive markings**

16. Section 50 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) If—

(a) a publication is reclassified under this Act or the Commonwealth Act; or

(b) a classification for a publication is revoked under this Act or 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.

**Amendment of s. 60—Computer games to bear determined markings and consumer advice**

17. Section 60 of the principal Act is amended by striking out subsection (4) and substituting the following subsections:

(4) 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.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(5) If two or more computer games are available for playing on a device referred to in subsection (4), the determined markings and consumer advice to be displayed on the device are those relevant to the computer game with the highest classification under this Act or the Commonwealth Act.



(6) If—

- (a) a computer game is reclassified under this Act or the Commonwealth Act; or
- (b) a classification or consumer advice for a computer game is revoked under this Act or 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.

**Amendment of s. 66—Certain advertisements not to be published**

18. Section 66 of the principal Act is amended by inserting after paragraph (b) of subsection (1) "or" and the following paragraph:

- (c) if the approval of the advertisement is revoked under this Act or the Commonwealth Act.

**Amendment of s. 72—Advertisement to contain determined markings and consumer advice**

19. Section 72 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) If—

- (a) a film, publication or computer game is reclassified under this Act or the Commonwealth Act; or
- (b) a classification or consumer advice for a film, publication or computer game is revoked under this Act or 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.

**Amendment of s. 73—Misleading or deceptive advertisements**

20. Section 73 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) If—

- (a) a film, publication or computer game is reclassified under this Act or the Commonwealth Act; or
- (b) a classification for a film, publication or computer game is revoked under this Act or 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.

**Amendment of s. 76—Exemption of film, publication, computer game or advertisement**

21. Section 76 of the principal Act is amended by striking out "or the National Director".

**Amendment of s. 77—Exemption of approved organisation**

22. Section 77 of the principal Act is amended by striking out from subsection (1) "or the National Director".

**Amendment of s. 78—Ministerial directions or guidelines**

23. Section 78 of the principal Act is amended by striking out "or the National Director".

**Amendment of s. 79—Organisation may be approved**

24. Section 79 of the principal Act is amended—

(a) by striking out from subsection (1) "or the National Director, by notice published in the *Commonwealth of Australia Gazette*,";

(b) by striking out from subsection (2) "or National Director";

(c) by striking out subsection (4) and substituting the following subsection:

(4) The Minister may revoke an approval if, because of a change in any matter referred to in subsection (2), the Minister considers that it is no longer appropriate that the organisation be approved.;

(d) by striking out from subsection (5) "or National Director, as the case may be,".

**Amendment of Schedule 1**

25. Schedule 1 of the principal Act is amended—

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

**Calling in films for classification**

1A. (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 South Australia, or the National Director has reasonable grounds to believe that it will be published in South Australia,

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 subclause (1) to be published in the *Commonwealth of Australia Gazette*.

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

Maximum penalty: \$5 000.

Expiation fee: \$315.

(4) It is a defence to a prosecution for an offence against subclause (3) to prove that the defendant did not intend—

- (a) to publish the film in South Australia; or
- (b) to cause, authorise, permit or license the film to be published in South Australia.;

(b) by inserting after subclause (1) of clause 2 the following subclause:

(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 South Australia, or the National Director has reasonable grounds to believe that it will be published in South Australia,

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.;

(c) by inserting in clause 2(2) "or (1a)" after "subclause (1)";

(d) by inserting after clause 3 the following clauses:

**Calling in a publication, film or computer game for reclassification**

4. (1) If—

- (a) the National Board proposes to reclassify a publication, film or computer game under the Commonwealth Act; and
- (b) the publisher of the publication, film or computer game resides in South Australia or has an office in South Australia,

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 clause is given must, within three business days after receiving the notice, comply with the notice.

Maximum penalty: \$5 000.

Expiation fee: \$315.

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

**Obtaining copies for review**

5. (1) If—

- (a) an application is made for a review of a classification decision under the Commonwealth Act by a person who is not the original applicant for classification of the publication, film or computer game concerned; and
- (b) the National Board or the National Review Board does not have a copy of the publication, film or computer game and a copy is not available to it; and

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- (c) the original applicant or the publisher of the publication, film or computer game resides in South Australia or has an office in South Australia,

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 clause is given must, within three business days after receiving the notice, comply with the notice.

Maximum penalty: \$5 000.

Expiation fee: \$315.

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

**Transitional provisions**

26. (1) Subject to this section, an amendment to the principal Act effected by a provision of this Act only applies in relation to—

- (a) a film, publication or computer game first published on or after the commencement of that provision; or
- (b) a film, publication or computer game for which an application for classification is made on or after the commencement of that provision.

(2) Section 24A of the principal Act, as inserted by section 10 of this Act, applies to a publication, film or computer game whether published before or after the commencement of section 10.

(3) Section 27 of the principal Act, as amended by section 11 of this Act, applies to a publication, film or computer game whether published before or after the commencement of section 11.

(4) Section 60(4) and (5) of the principal Act, as substituted by section 17 of this Act, apply to a computer game whether published before or after the commencement of section 17.

(5) Clauses 4 and 5 of Schedule 1 of the principal Act, as inserted by section 25 of this Act, apply to a publication, film or computer game whether published before or after the commencement of section 25.