

# Classification (Publications, Films & Computer Games) (Enforcement) Bill

## EXPLANATORY MEMORANDUM

### PART 1—PRELIMINARY

*Clause 1* sets out the purposes of the Act.

*Clause 2* provides for Part 1 of the Act to come into operation on the day on which the Act receives Royal Assent and for the remaining provisions to come into operation on a day or days to be proclaimed.

*Clause 3* contains definitions.

“**buy**” includes exchange or hire;

“**film**” includes a video and a computer-generated image;

“**sell**” includes exchange or hire, offer or display for sale, exchange or hire.

*Clause 4* explains the circumstances in which a person is taken to “exhibit” a film in a public place.

*Clause 5* provides that the Act does not apply to services which are covered by the Broadcasting Services Act 1992 of the Commonwealth.

### PART 2—FILMS

*Clause 6* provides that a person must not exhibit a film in a public place unless it is classified, is exhibited with the same title as it is classified and is exhibited in the form in which it is classified.

*Clause 7* requires the display of a notice about classifications on any premises open to the public for the exhibition of films.

*Clause 8* prohibits the exhibition of films classified RC or X.

*Clause 9* makes it an offence to screen a film which is unclassified or classified as RC, X, R or MA in such a manner as to be visible to persons in a public place.

*Clause 10* provides that it is an offence for a parent or guardian to knowingly permit a minor to attend the exhibition in a public place of a film which has been or would be classified RC, X or R.

*Clause 11* makes it an offence for a minor who has attained the age of 10 years to knowingly attend the exhibition of a film classified RC, X or R.

*Clause 12* provides that it is an offence to screen in the presence of a minor in a private place a film classified RC, X or R or an unclassified film which would be classified RC, X or R.

*Sub-clause (2)* provides a defence where the defendant believed on reasonable grounds that the minor was an adult or where the parent or guardian consented to the minor being present at the exhibition of the film.

*Clause 13* makes it an offence to exhibit a film classified R in a public place if a minor is present at the exhibition.

*Clause 14* makes it an offence to exhibit in a public place a film classified MA if a minor under 15 years is present during any part of the exhibition of the film without being accompanied by his or her parent or guardian.

*Clause 15* prohibits the sale of unclassified films or films classified RC or X.

*Clause 16* provides that a classified film must not be sold unless it is sold under the same title as that under which it is classified and in the same form in which it is classified.

*Clause 17* requires the seller of films to display a notice about classifications for films on any premises open to the public for the purposes of the sale of films.

*Clause 18 (1)* makes it an offence to sell a classified film unless the determined markings and any relevant consumer advice are on the container, wrapping or casing in which the film is sold.

*Clause 18 (2)* makes it an offence to sell an unclassified film if the container, wrapper or casing in which the film is sold bears markings which indicate that the film has been classified.

*Clause 18 (3)* makes it an offence to sell a classified film if the container, wrapper or casing in which the film is sold bears markings indicating that the film is not classified or is classified differently.

*Clause 19* makes it an offence to knowingly keep a film classified RC or X on any premises from which classified films are sold.

*Clause 20* makes it an offence to sell or deliver a film classified RC, X or R or an unclassified film which would be classified RC, X or R to a minor.

*Clause 21* empowers a member of the police force to demand the name, age and address of a person suspected to have contravened or to be about to contravene a provision of this Part.

*Clause 22* provides that a person must not leave in a public place or on private premises without the occupier's permission a film which has been or would be classified RC, X, R or MA.

*Clause 23* prohibits the possession or copying of a film classified RC or X or an unclassified film which would be classified RC, X, R or MA with the intention of selling or exhibiting the film.

*Clause 24* makes it an offence to make or produce an objectionable film for the purpose of gain.

### **PART 3—PUBLICATIONS**

*Clause 25* prohibits the sale of publications which have been classified RC or which have not been classified but if classified would not be classified as Unrestricted.

*Clause 26* details the conditions applying to the sale of publications classified Category 1 restricted.

*Clause 27* details the conditions applying to the sale of publications classified Category 2 restricted.

*Clause 28* prohibits the sale of an unclassified publication which bears a marking which indicates that it has been classified; or a classified publication with a marking which indicates that the publication is unclassified or has a different classification.

*Clause 29* prohibits the sale or delivery of publications classified Category 1 restricted or Category 2 restricted to minors other than by a parent or guardian of that minor.

*Clause 30* provides that a person must not deposit a publication which has been or would be classified Category 1 restricted, Category 2 restricted or RC in a public place or in such a manner as to be visible to persons in a public place.

*Clause 31* prohibits the possession or copying of a submittable publication or a publication classified RC with the intention of selling that publication or the copy of that publication.

*Clause 32* prohibits the printing or making or producing of an objectionable publication for the purpose of publishing it.

*Clause 33* provides that publications which depict or deal with certain matters considered to be unsuitable for general public display, whether classified or not, must not be exhibited or displayed in a public place accessible by minors unless the offending part is concealed from view or cannot be seen without being handled.

### **PART 4—COMPUTER GAMES**

*Clause 34* provides that a person must not demonstrate in a public place or sell a computer game unless the computer game is classified, and is sold or demonstrated with the same title as that under which it is classified and is in exactly the same form in which it is classified.

*Clause 35* requires the display of a notice about classifications on any premises open to the public for the sale or demonstration of computer games.

*Clause 36 (1)* makes it an offence to sell or demonstrate in a public place a computer game which is classified as RC or a computer game which is unclassified but would be classified RC.

*Clause 36 (2)* provides an offence for a minor to knowingly buy a computer game classified RC.

*Clause 37* provides that a computer game classified MA(15+) must not be demonstrated in a public place unless the determined markings of the computer game are exhibited before the game can be played and entry to the public place is restricted to adults or minors who are in the company of a parent or guardian.

*Clause 38* makes it an offence to demonstrate a computer game which has been or would be classified RC or MA(15+) in such a way that it can be seen from a public place.

*Clause 39* provides that it is an offence to demonstrate in the presence of a minor in a private place a computer game classified RC or an unclassified computer game which would be classified RC.

*Clause 40 (1)* makes it an offence to sell a classified computer game unless the determined markings and any relevant consumer advice are on the container, wrapping or casing in which the computer game is sold.

*Clause 40 (2)* makes it an offence to sell an unclassified computer game if the container, wrapper or casing in which it is sold bears markings which indicate that the computer game has been classified.

*Clause 40 (3)* makes it an offence to sell a classified computer game if the container, wrapper or casing in which it is sold bears markings indicating that the computer game is not classified or is classified differently.

*Clause 41* makes it an offence to knowingly keep a computer game classified RC or an unclassified computer game on any premises from which classified computer games are sold.

*Clause 42 (1)* makes it an offence to sell or deliver a computer game classified RC or an unclassified computer game which would be classified RC to a minor.

*Clause 42 (2)* makes it an offence for anyone other than a parent or guardian of a minor under 15 years to sell to that minor a computer game classified MA(15+).

*Clause 43* empowers a member of the police force to demand the name, age and address of a person suspected to have contravened or to be about to contravene a provision of this Part.

*Clause 44* provides that a person must not leave in a public place or without the occupier's permission, on private premises a computer game which has been or would be classified RC or MA(15+).

*Clause 45* prohibits the possession or copying of a computer game classified RC or an unclassified computer game which would be classified RC or MA(15+) with the intention of selling or exhibiting the computer game.

## **PART 5—ADVERTISEMENTS**

*Clause 46* prohibits the publication of an advertisement for a film, publication or computer game which has been or would be refused approval pursuant to the procedure and criteria set out in section 29 of the Commonwealth Act.

*Clause 47* prohibits the publication of an advertisement for an unclassified film unless a certificate of exemption has been granted, a film classified RC or X, a submittable publication or a publication classified RC, an unclassified computer game or a computer game classified RC.

*Clause 48* prohibits the screening in a public place of an advertisement for a film which has a classification level higher than the film which is being exhibited.

*Clause 49* makes it an offence to screen in a public place or so that it can be seen from a public place an advertisement for a film which has been classified X, R or MA. It is a defence to prove that if the advertised film is classified MA the advertisement was screened with a film classified R or MA; and it is a defence to prove that if the advertised film is classified R, it was screened with a film classified R or the advertised film was screened in a restricted publications area.

*Clause 50* makes it an offence to sell a film that is accompanied by an advertisement for another film which has been classified at a higher classification level than the feature film.

*Clause 51* makes it an offence to sell a computer game which is accompanied by advertisements for other computer games one or more of which have been classified at a higher classification level than the computer game sold.

*Clause 52* provides that advertisements for classified films or classified publications, or classified computer games must contain the determined markings relevant to the classification and any relevant consumer advice.

*Clause 53* makes it an offence to publish an advertisement for an unclassified film, an unclassified publication or an unclassified computer game with a marking that indicates that the film, publication or computer game has been classified.

*Clause 54* prohibits the publication of an advertisement for publications classified Category 2 restricted other than in a publication classified Category 2 restricted or in a restricted publications area.

*Clause 55* provides that any publication which contains an advertisement for a film, a publication classified Category 1 restricted, a publication classified Category 2 restricted, or a computer game must contain a list of the classification symbols and determined markings for films or publications or computer games as applicable.

## **PART 6—ON LINE INFORMATION SERVICES**

*Clause 56* contains definitions.

*Clause 57* provides an offence for the publication or transmission of objectionable material.

*Clause 58* provides an offence for the publication or transmission to minors of material unsuitable for minors.

*Clause 59* prohibits the advertising of objectionable material on on-line services.

## **PART 7—CALL IN PROVISIONS**

*Clause 60* empowers the Director of the Classification Board to require a publisher to submit an application for classification of a particular publication or subsequent issues of a particular publication.

*Clause 61* empowers the Director of the Classification Board to require the publisher of a computer game to submit an application for classification of that computer game where the Director believes that the computer game is likely to contain contentious material.

*Clause 62* empowers the Director of the Classification Board to call in an advertisement for approval.

## **PART 8—EXEMPTIONS**

*Clause 63* empowers the Director of the Classification Board to exempt any film, publication or computer game or advertisement from the requirements of the Act.

*Clause 64* empowers the Director of the Classification Board to approve an organisation as exempt from the requirements of the Act in relation to the exhibition of particular films at a particular event specified in a certificate of exemption.

*Clause 65* provides that the Director of the Classification Board must give effect to any directions or guidelines issued by the Minister in relation to the application of the Act.

*Clause 66* empowers the Director of the Classification Board to approve an organisation for the purposes of clause 67 and details the considerations to be taken into account in making such a decision.

*Clause 67* provides that an approved organisation may apply to the Director to be exempt from the requirements of the Act.

## **PART 9—ENFORCEMENT**

*Clause 68* contains definitions.

*Clause 69* details police powers of entry, search and seizure.

*Clause 70* details the elements of informed consent of an occupier to a request from a member of the police force to enter and search premises.

*Clause 71* empowers a magistrate to issue a warrant authorising entry, search and seizure in relation to a suspected offence against the Act.

*Clause 72* provides that a member of the police force executing a warrant must announce that he or she is authorised to execute the warrant and give the opportunity to any person at the place to allow execution.

*Clause 73* provides that a member of the police force executing a warrant must identify himself or herself to the occupier or any person apparently representing the occupier and give to that person a copy of the warrant.

*Clause 74* provides that things connected with the offence named in the warrant or with another offence against the Act which are found in the course of executing the warrant are deemed to be authorised by the warrant to be seized.

*Clause 75* empowers the court to order that a film classified RC or X or a publication or computer game classified RC or an objectionable film or a objectionable publication be forfeited to the Crown.

## **PART 10—GENERAL**

*Clause 76* details the requirements of a restricted publications area.

*Clause 77* provides that a person in charge of a restricted publications area must not permit a minor to enter that area.

*Clause 78* provides that a certificate by the Director of the Classification Board which states certain facts is evidence in any proceedings for an offence against the Act of the facts stated in the certificate.

*Clause 79* provides that a prosecution in respect of an unclassified film, publication or computer game must not be commenced until such film, publication or computer game has been classified unless an arrest has been effected under section 458 of the Crimes Act.

*Clause 80* provides for the establishment of the state of mind of a body corporate.

*Clause 81* attributes liability to an employer where an employee or agent of a person was acting within the scope of his or her employment or authority.

*Clause 82* provides that where the court is satisfied that the defendant has committed an offence the court may order that person to pay, in addition to any other costs, the cost of any classification incurred in the prosecution.

*Clause 83* provides that a film, publication or computer game which has been classified as RC or as a restricted category may be published to a prescribed person or a prescribed body.

*Clause 84* empowers the Governor in Council to make regulations under the Act.

#### **PART 11—REPEALS, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS**

*Clause 85* repeals the **Classification of Films and Publications Act 1990**.

*Clause 86* amends the Crimes Act.

*Clause 87* contains transitional provisions.

*Clause 88* inserts a new section in relation to child pornography into the Crimes Act.

