

CLASSIFICATION OF PUBLICATIONS ACT 1984

No. 107 of 1984

TABLE OF PROVISIONS

PART I

PRELIMINARY

1. Short title.
2. Commencement.
3. Interpretation.
4. Arrangements with the Commonwealth with respect to the censoring of films.
5. Appointment of censor, &c., where no arrangement under section 4 is in operation.

PART II

ADMINISTRATION

6. Publications Classification Board.
7. Registrar.
8. Powers of the Board.
9. Protection for members of Board, Registrar, &c.

PART III

CLASSIFICATION OF PUBLICATIONS

Division 1—Criteria for classification of publications

10. Criteria for classification.

Division 2—Publications other than films

11. Application: Division 2 of Part III.

12. Board to consider classification to be assigned to a publication.
13. Classification of publication by Board.
14. Board to notify applicant of decision.
15. Variation of classification of publication.
16. Notice in respect of decision by Board.
17. Conditions applying to classified publications.

Division 3—Films

18. Application: Division 3 of Part III.
19. Application for classification.
20. Screening of film.
21. Classification of film by censor.
22. Notice in respect of decision by censor.
23. Application for review of classification.
24. Notice of application.
25. Review of classification.
26. Revocation of classification, &c., of film.

PART IV

OFFENCES IN RESPECT OF PUBLICATIONS OTHER THAN FILMS

Division 1—Category 1 and category 2 restricted publications

- 27. Sale, &c., of category 1 and category 2 restricted publications.
- 28. Advertising of category 2 restricted publications.
- 29. Handling, &c., of category 2 restricted publications by minors.

Division 2—Unclassified objectionable publications

- 30. Interpretation: Division 2 of Part IV.
- 31. Prohibition on sale, &c., of unclassified objectionable publications.
- 32. Subsequent classification of publication.

Division 3—Prohibited publications

- 33. Prohibition on sale, &c., of prohibited publications.

PART V

OFFENCES IN RESPECT OF FILMS

Division 1—Classified films

- 34. Offences in respect of "R" films.
- 35. Container, &c., to bear prescribed markings.
- 36. Notice to be displayed in premises where films sold.
- 37. Classified films containing advertisements for other films.

Division 2—Unclassified films

- 38. Prohibition on sale, &c., of unclassified films.

- 39. Restriction on exhibition, display, of containers, &c., for unclassified films.

Division 3—Objectionable films

- 40. Interpretation: Division 3 of Part V.
- 41. Prohibition on sale, &c., of objectionable films.
- 42. Classification or subsequent classification of film.

PART VI

SPECIAL OFFENCES IN RESPECT OF CERTAIN ACTS

- 43. Prohibition against production and reproduction of child abuse publications and bestiality publications.
- 44. Prohibition against procurement of certain acts.

PART VII

MISCELLANEOUS

- 45. Records and evidence of classification, &c.
- 46. Authority to prosecute.
- 47. Proceedings on prosecutions.
- 48. Offences by principals and bodies corporate.
- 49. Matters averred to in complaint.
- 50. Defence to offence with respect to child or minor.
- 51. Power to enter and seize.
- 52. Regulations.
- 53. Repeals.
- 54. Savings and transitional provisions.

SCHEDULE 1

PROVISIONS WITH RESPECT TO MEMBERSHIP AND MEETINGS OF PUBLICATIONS CLASSIFICATION BOARD

SCHEDULE 2

SAVINGS AND TRANSITIONAL PROVISIONS



CLASSIFICATION OF PUBLICATIONS ACT 1984

—————
 No. 107 of 1984
 —————



AN ACT to provide for the classification of publications, the establishment of the Publications Classification Board, the entering into of an arrangement for the classification of films by officers of the Commonwealth, and for other related purposes.

[Royal Assent 21 December 1984]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Classification of Publications Act 1984*. Short title.

2—(1) Except as provided in subsection (2), this Act shall commence on the day on which it receives the royal assent. Commencement.

(2) Division 3 of Part III and Part V shall commence on such day as may be fixed by proclamation.

Interpretation.

3—(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

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

“ advertisement ” includes—

(a) every visual form of advertising, including any accompanying or spoken words or other sounds, whether in a publication or by the exhibition of film, or photographs, or by way of television, or in any other way; and

(b) any form of advertising capable of being heard from a radio or any instrument or device for the production of sound;

“ appeal censor ” means—

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

(b) if there is no such arrangement in operation, the appeal censor appointed pursuant to this Act;

“ bestiality ” means sexual activity of any kind between a human being and an animal;

“ Board ” means the Publications Classification Board established under section 6;

“ category 1 restricted publication ” means a publication classified as a category 1 restricted publication by the Board under this Act;

“ category 2 restricted publication ” means a publication classified as a category 2 restricted publication by the Board under this Act;

“ censor ” means—

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

- (b) if there is no such arrangement in operation, the censor appointed pursuant to this Act;
- “ chairman ” means the chairman of the Board;
- “ child ” means a person who has not attained the age of 16 years;
- “ child abuse publication ” means a publication that depicts in pictorial form a person (whether engaged in sexual activity or otherwise) who is, or who is apparently, a child in a manner that is likely to cause offence to a reasonable adult;
- “ classified ” means classified under this Act;
- “ *Commonwealth Gazette* ” means the *Commonwealth of Australia Gazette*;
- “ deputy chairman ” means the deputy chairman of the Board;
- “ film ” includes a cinematograph film, video tape, video disc, and any other form of recording from which a visual image can be produced;
- “ member ” means a member of the Board and includes the chairman and the deputy chairman;
- “ minor ” means a person who has not attained the age of 18 years but does not include a married person;
- “ 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) is a child abuse publication;
 - (c) describes, depicts, expresses, or otherwise deals with an act of bestiality; or
 - (d) promotes, incites, or encourages terrorism;
- “ prohibited publication ” means a publication classified as a prohibited publication by the Board;
- “ public place ” means any place open to the public, whether on payment or the provision of any other consideration or otherwise, and includes a shop, stall, vehicle, or other place to which persons are invited or permitted to resort to obtain, view, or inspect goods or to obtain a service;

- “ publication ” means any book, paper, magazine, film, slide, or written or pictorial matter that is available, or intended to be made available, for exhibition, display, sale, or distribution to the public;
- “ publish ” includes sell, exhibit, display, and distribute;
- “ Registrar ” means the Registrar of the Board;
- “ the regulations ” means regulations made and in force under this Act;
- “ reproduce ”, in relation to a publication, means to reproduce that publication by means of printing, photographing, or recording or by any other means;
- “ scenario ” includes a statement or summary of any incidents, or of the plot of a play or story, depicted or intended to be depicted by means of a film;
- “ sell ” means sell, whether by wholesale or retail, and includes—
- (a) offer or expose for sale;
 - (b) keep or have in possession for sale;
 - (c) barter or exchange;
 - (d) let on hire or offer to let on hire;
 - (e) deal in or agree to sell;
 - (f) send, forward, or deliver, for, or in expectation of receiving, any payment or other consideration; and
 - (g) receive for sale or on sale;
- “ terrorism ” has the meaning assigned to that expression by the *Australian Security Intelligence Organization Act 1979* of the Commonwealth;
- “ unclassified ” means not classified under this Act;
- “ vehicle ” has the meaning assigned to that expression by the *Traffic Act 1925*.

(2) In respect of a business that is carried on in or on any premises each of the following persons is, for the purposes of this Act, a responsible person, namely:—

- (a) the person carrying on that business;
- (b) any person apparently having the management or charge of the business or the management or charge of the business so far as it is carried on in or on those premises.

(3) Where a publication is classified all copies of that publication are deemed to be so classified.

(4) A classified film that has been subjected to an alteration or addition after it has been classified shall, unless the censor has approved of the alteration or addition in writing, be deemed to be an unclassified film.

4—(1) The Governor may arrange with the Governor-General of the Commonwealth for the exercise and discharge by officers or authorities of the Commonwealth, on behalf of the State, of the powers, authorities, functions, and duties of a censor or of an appeal censor with respect to the classification of films under this Act.

Arrangements with the Commonwealth with respect to the censoring of films.

(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 Governor at any time.

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

(4) A notice under subsection (3) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

5—(1) Where there is no arrangement in operation under section 4, a censor and an appeal censor may be appointed and employed subject to and in accordance with the *Public Service Act 1973*.

Appointment of censor, &c., where no arrangement under section 4 is in operation.

(2) The offices of censor and appeal censor may be held in conjunction with any other offices of the Public Service.

PART II

ADMINISTRATION

6—(1) There is established by this Act a board to be known as the Publications Classification Board.

Publications Classification Board.

(2) The Board shall consist of 5 members appointed by the Governor.

(3) In appointing persons as members of the Board, the Governor may give consideration to appointing persons skilled in the fields of psychology, literature, and education.

(4) The Governor may appoint one member of the Board to be chairman and another member of the Board to be deputy chairman.

(5) Schedule 1 has effect with respect to the membership and meetings of the Board.

(6) The Minister may make arrangements to make available to the Board such accommodation as the Board may require.

Registrar.

7—(1) For the purposes of this Act there shall be a Registrar of the Board who shall be appointed under, and hold office subject to, the *Public Service Act 1973*.

(2) The office of Registrar may be held in conjunction with any other office of the Public Service.

Powers of the Board.

8—Where the Board considers it necessary or desirable to inquire into any matter in relation to the exercise of its functions under this Act, Division 2 of Part II of the *Evidence Act 1910* applies to that inquiry as if—

(a) the Board were such a board of inquiry as is referred to in section 14 (1) (b) of that Act; and

(b) the matter were the matter into which it was appointed to inquire by its instrument of appointment.

Protection for members of Board, Registrar, &c.

9—Where a member, the Registrar, the censor, or the appeal censor does or purports to do, or omits or purports to omit to do, any act or thing in good faith for the purpose of administering or executing this Act, he shall not be personally subjected to any action, liability, claim, or demand in respect of that act or omission.

PART III

CLASSIFICATION OF PUBLICATIONS

Division 1—Criteria for classification of publications

Criteria for classification.

10—(1) A prescribed authority shall, in considering whether a publication is an objectionable publication, or is suitable or unsuitable for perusal or viewing by a minor, have regard to the standards of morality, decency, and propriety generally accepted by reasonable adults.

(2) 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 a minor, 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.

(3) A prescribed authority 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.

(4) The Board shall, in performing its functions under this Act, give effect, as far as possible, to the following principles:—

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

(5) In this section, “prescribed authority” means the Board, the censor, and the appeal censor.

Division 2—Publications other than films

11—(1) This Division applies to publications other than films.

Application:
Division 2 of
Part III.

(2) Nothing in this Division applies to or in relation to an application for classification of a publication where a previous application for classification of the same publication has been made but not determined.

12—(1) The Board may, of its own motion, and shall, on the application in the prescribed manner of any person, consider the classification to be assigned to a publication.

Board to
consider
classification to
be assigned to
a publication.

(2) The Board shall consider the classification to be assigned to a publication referred to the Board by the Minister for its consideration.

13—(1) Where the Board decides that a publication—

- (a) is not an objectionable publication; and
- (b) is not unsuitable for perusal by a minor,

the Board shall classify the publication as an unrestricted publication.

Classification of
publication by
Board.

(2) Subject to subsection (3), where the Board 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 a minor,
the Board shall classify the publication as a category 1 or category 2 restricted publication.

(3) The Board shall classify as a prohibited publication a publication which—

(a) 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, in the opinion of the Board, be classified as a prohibited publication;

(b) is a child abuse publication;

(c) describes, depicts, expresses, or otherwise deals with, an act of bestiality; or

(d) promotes, incites, or encourages terrorism.

(4) Where a publication under consideration by the Board is a single issue of a series of publications that are issued periodically or by instalment, the Board may classify future publications of the same series on the basis of the publication under consideration and the classification shall apply to those issues accordingly.

(5) Where changes have been or are to be made in the nature, contents, or characteristics of an issue of a publication referred to in subsection (4) which is classified, and the Board is satisfied that by reason of those changes the classification should be varied the Board may vary the classification so far as it relates to issues of that publication published after such date as the Board may specify.

14—Where the Board makes a decision in respect of the classification of a publication pursuant to section 13 on the application of any person or on a referral by the Minister it shall notify that person or the Minister of its decision in writing within 14 days after the day on which the decision was made.

Board to notify applicant of decision.

15—(1) Subject to this section, the Board may of its own motion and shall, on the application of any person or the Minister, review any classification assigned to a publication and, on the review, may vary the classification as it considers appropriate.

Variation of classification of publication.

(2) The Board shall not review a classification assigned to a publication pursuant to subsection (1) for a period of 12 months from the day on which the classification of the publication first took effect.

(3) Where an application is made under subsection (1) and the Board has, within the preceding 12 months, reviewed the classification assigned to the publication, the Board shall not be obliged to proceed with the review until the expiration of 12 months from that previous review.

(4) Subsections (2) and (3) do not apply to a publication that, being a single issue of a series of publications that are issued periodically or by instalment, is classified by virtue of a classification assigned to an earlier issue of the series pursuant to section 13 (4).

(5) Where the Board reviews the classification assigned to a publication on the application of a person or the Minister under subsection (1) it shall notify the person or the Minister in writing of the result of the review of the classification within 14 days after it has reviewed the classification of the publication.

16—(1) Where the Board—

(a) makes a decision in respect of the classification of a publication pursuant to section 13; or

(b) varies the classification of a publication pursuant to section 13 (5) or 15,

Notice in respect of decision by Board.

the Board shall cause a notice containing the prescribed particulars to be published in at least one daily newspaper circulating generally throughout the State within 14 days after the decision was made or the classification was varied.

(2) For the purposes of subsection (1), “prescribed particulars” means—

(a) a notification—

(i) that on a specified day the Board made decisions in respect of the classification of publications or varied the classification of publications; and

(ii) of the date that the classifications or variation of classifications take effect;

(b) a statement to the effect that particulars with respect to the publications, including their titles or names, are available on request from the Registrar of the Publications Classification Board without payment of a fee; and

(c) such other particulars as the Board considers necessary.

(3) Except as provided in section 13 (5), the classification of a publication or the variation of the classification of a publication shall take effect—

(a) 14 days after the day on which the decision was made or the classification was varied; or

(b) on such earlier day as the Board may determine.

Conditions
applying to
classified
publications.

17—(1) The following conditions apply in relation to a publication that is classified as a category 1 restricted publication:—

(a) the publication shall not be sold or delivered to a minor (other than by a parent or guardian of that minor);

(b) the publication shall not be exhibited or displayed 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;

(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) The following conditions apply in relation to a publication that is classified as a category 2 restricted publication:—

(a) the publication shall not be sold, delivered, exhibited, or displayed to a minor (other than by a parent or guardian of that minor);

- (b) the publication shall not be exhibited or displayed in a public place or in such a manner that it is visible from a public place;
- (c) the publication shall not be sold or delivered to a person unless the publication bears the prescribed markings;
- (d) the publication shall not be sold or delivered to a person who has not made a direct request for the publication;
- (e) the publication shall not be sold or delivered to a person unless the publication is contained in a package made of plain opaque material.

Division 3—Films

18—Nothing in this Division applies to or in relation to an application for classification of a film where—

Application:
Division 3 of
Part III.

- (a) a previous application for classification of the same film has been made but not determined; or
- (b) a decision in respect of the film is the subject of an application for review by the appeal censor and he has not determined that application.

19—(1) An application for the classification of a film may be made to the censor by any person.

Application for
classification.

(2) An application for the classification of a film shall be in accordance with a form approved by the censor and shall be lodged with the censor together with the prescribed fee and scenario of the film.

20—(1) The censor may require a film that is the subject of an application for classification to be screened in accordance with this Division.

Screening
of film.

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

(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 of a film, 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.

Classification
of film by
censor.

21—(1) Where the censor decides that a film is not an objectionable publication the censor shall classify the film—

- (a) as a “ G ” film, where he is of the opinion that the film is suitable for general exhibition;
- (b) as a “ PG ” film, where he is of the opinion that the film can be recommended for viewing by persons under the age of 15 years only with the guidance of an adult;
- (c) as an “ M ” film, where he is of the opinion that the film cannot be recommended for viewing by persons under the age of 15 years; or
- (d) as an “ R ” film, where he is of the opinion that the film is unsuitable for viewing by a minor.

(2) Where the censor decides that a film is an objectionable publication the censor shall not classify the film.

(3) The censor shall keep a record of all decisions made by him under this section.

Notice in
respect of
decision by
censor.

22—(1) Where the censor makes a decision in respect of a film pursuant to section 21, he shall cause a notice of the decision—

- (a) to be given in writing to the person who applied for classification of the film; and
- (b) to be published—
 - (i) where there is an arrangement in operation under section 4, in the *Commonwealth Gazette*; or
 - (ii) where there is no arrangement in operation under section 4, in the *Gazette*,
within 30 days after the day on which the decision was made.

(2) A decision referred to in subsection (1) shall take effect on the day on which the notice of the decision is published in the *Commonwealth Gazette* or, as the case may be, the *Gazette* in accordance with that subsection.

Application for
review of
classification.

23—(1) Where the censor has made a decision in respect of a film pursuant to section 21—

- (a) the person who applied for the classification; or
- (b) the Minister,

may apply to the appeal censor for a review of the decision.

(2) An application under subsection (1) shall be in writing 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 subsection (1) (a)—within 30 days after the day on which he received written notification of the decision to which the application relates; or
- (b) where the applicant is the Minister—at any time after the day on which the notice of the decision was published in the *Commonwealth Gazette* or, as the case may be, the *Gazette*.

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

24—Where—

- (a) the censor has made a decision in respect of a film pursuant to section 21; and
- (b) the Minister applies to the appeal censor for a review of that decision,

Notice of application.

the appeal censor shall cause a notice in writing of the application for review to be given to the person who applied to the censor for classification of the film.

25—(1) Where an application for review of a decision of the censor is made to the appeal censor, the appeal censor shall review that decision and may make a decision—

Review of classification.

- (a) confirming the decision of the censor; or
- (b) setting aside that decision and classifying, or not classifying, the film, as the appeal censor thinks fit.

(2) The appeal censor may determine the procedure for the hearing of an application under this section.

(3) Where the appeal censor makes a decision under this section, he shall, within 14 days after the day on which the decision is made—

- (a) notify the applicant in writing of the decision; and
- (b) cause a notice setting out the terms of the decision to be published—
 - (i) where there is an arrangement in operation under section 4, in the *Commonwealth Gazette*; or

- (ii) where there is no arrangement in operation under section 4, in the *Gazette*.

(4) A decision made by the appeal censor under this section shall take effect on the day on which a notice of the decision is published in the *Commonwealth Gazette* or, as the case may be, the *Gazette* in accordance with subsection (3).

(5) The appeal censor shall keep a record of all decisions made by him under this section.

Revocation of
classification,
&c., of film.

26—(1) Subject to this section, the appeal censor may—

(a) on application made in accordance with this section by—

(i) the person who applied for the classification of a film in accordance with section 19; or

(ii) the Minister; or

(b) of his own motion,

revoke the classification of a film or a decision not to classify a film.

(2) An application under this section—

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

(b) shall be lodged with the appeal censor at any time after the expiration of the period of—

(i) 12 months from the day on which the classification or decision to which the application relates took effect; or

(ii) where the appeal censor has previously disposed of an application under this section in respect of the film, 12 months from the day on which the last application was disposed of.

(3) The appeal censor shall not, of his own motion, revoke a classification or a decision at any time before the expiration of the period of 12 months from the day on which the classification or decision took effect.

(4) The appeal censor shall not revoke a classification or a decision unless he is satisfied that it is proper to do so, having regard to the provisions in this Division relating to the classification of films.

(5) Where the appeal censor revokes the classification of a film or a decision not to classify a film, he shall, within 14 days after the day on which the classification or decision is revoked, cause a notice of revocation under this section of the classification or decision to be published—

- (a) where there is an arrangement in operation under section 4, in the *Commonwealth Gazette*; or
- (b) where there is no arrangement in operation under section 4, in the *Gazette*.

(6) The revocation of the classification of a film or a decision not to classify a film shall take effect on the day on which a notice of the revocation is published in the *Commonwealth Gazette* or, as the case may be, the *Gazette* in accordance with subsection (5).

PART IV

OFFENCES IN RESPECT OF PUBLICATIONS OTHER THAN FILMS

Division 1—Category 1 and category 2 restricted publications

27—A person shall not sell, deliver, exhibit, display, or otherwise deal with, or cause or permit to be sold, delivered, exhibited, displayed, or otherwise dealt with, a category 1 or category 2 restricted publication otherwise than in accordance with the conditions applicable to that publication.

Sale, &c., of category 1 and category 2 restricted publications.

Penalty: \$1 000 or imprisonment for 3 months, or both.

28—(1) A person shall not publish or issue an advertisement relating to a category 2 restricted publication or cause or permit such an advertisement to be published or issued.

Advertising of category 2 restricted publications.

Penalty: \$500.

(2) A person shall not publish or issue an advertisement that states or indicates that category 2 restricted publications are available at any place or from any person, or cause or permit such an advertisement to be published or issued.

Penalty: \$500.

Handling, &c.,
of category 2
restricted
publications
by minors.

29—(1) A person shall not sell a category 2 restricted publication to another person, knowing or having reason to believe that that other person intends to deliver, exhibit, or display the publication to a minor (other than a minor of which that other person is the parent or guardian).

Penalty: \$1 000 or imprisonment for 3 months, or both.

(2) A responsible person in respect of a business carried on in or on any premises shall not—

- (a) permit a minor employed in that business to have access to a category 2 restricted publication; or
- (b) cause or permit such a minor to sell a category 2 restricted publication.

Penalty: \$1 000 or imprisonment for 3 months, or both.

Division 2—Unclassified objectionable publications

Interpretation:
Division 2
of Part IV.

30—In this Division, “unclassified objectionable publication” means an objectionable publication other than—

- (a) a film;
- (b) a category 1 or category 2 restricted publication; or
- (c) a prohibited publication.

Prohibition on
sale, &c., of
unclassified
objectionable
publications.

31—(1) Subject to subsection (2), a person shall not—

- (a) sell or deliver an unclassified objectionable publication or cause or permit such a publication to be sold or delivered; or
- (b) exhibit or display, or cause or permit to be exhibited or displayed, an unclassified objectionable publication in a public place or in such a manner that it is visible from a public place;

Penalty: \$5 000 or imprisonment for 12 months, or both.

(2) Subsection (1) (a) does not apply to the delivery of an unclassified objectionable publication to the Registrar or a member for the purpose of having a decision made under this Act in relation to the publication.

(3) A person shall not exhibit or display an unclassified objectionable publication to a minor (other than a minor of which that person is the parent or guardian).

Penalty: \$1 000.

(4) A person shall not display, publish, or issue an advertisement relating to an unclassified objectionable publication or cause or permit such an advertisement to be displayed, published, or issued.

Penalty: \$1 000.

32—A person shall not be convicted of an offence under section 31 (1) if it is proved that—

Subsequent classification of publication.

- (a) since the offence was alleged to have been committed the publication has been classified; and
- (b) the act alleged to constitute the offence did not infringe any conditions (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.

Division 3—Prohibited publications

33—(1) A person shall not—

Prohibition on sale, &c., of prohibited publications.

- (a) sell or deliver a prohibited publication or cause or permit such a publication to be sold or delivered; or
- (b) exhibit or display, or cause or permit to be exhibited or displayed, a prohibited publication in a public place or in such a manner that it is visible from a public place.

Penalty: \$5 000 or imprisonment for 12 months, or both.

(2) A person shall not exhibit or display a prohibited publication to a minor (other than a minor of which that person is the parent or guardian).

Penalty: \$1 000 or imprisonment for 3 months, or both.

PART V

OFFENCES IN RESPECT OF FILMS

Division 1—Classified films

34—(1) A person shall not sell or deliver a film classified as an “R” film to a minor (other than a minor of which that person is the parent or guardian).

Offences in respect of “R” films.

Penalty: \$1 000 or imprisonment for 3 months, or both.

(2) A person shall not screen a film or part of a film classified as an “R” film—

- (a) in any premises in which publications are sold; or
- (b) in any other premises associated, or used in conjunction with, those premises.

Penalty: \$1 000.

Container, &c.,
to bear
prescribed
markings.

35—A person shall not exhibit or display, or cause or permit to be exhibited or displayed, in a public place or in such a manner that it is visible from a public place, the container, wrapping, or casing for a classified film unless the container, wrapping, or casing bears the prescribed markings in respect of the classification assigned to that film.

Penalty: \$500.

Notice to be
displayed in
premises where
films sold.

36—(1) A responsible person in respect of a business carried on in or on any premises where classified films are sold shall display or cause to be displayed in the premises a notice, clearly visible to persons resorting to the premises, which contains the prescribed particulars and satisfies the prescribed requirements.

(2) A responsible person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

Classified films
containing
advertisements
for other
films.

37—A person shall not sell or deliver, or cause or permit to be sold or delivered, a classified film that contains an advertisement relating to—

- (a) where the film is classified as a “ G ” film—a film classified as a “ PG ” film, an “ M ” film, an “ R ” film, or an unclassified film;
- (b) where the film is classified as a “ PG ” film—a film classified as an “ M ” film, an “ R ” film, or an unclassified film;
- (c) where the film is classified as an “ M ” film—a film classified as an “ R ” film or an unclassified film; or
- (d) where the film is classified as an “ R ” film—an unclassified film.

Penalty: \$1 000.

Division 2—Unclassified films

Prohibition
on sale, &c.,
of unclassified
films.

38—(1) Subject to subsection (2), a person shall not sell or deliver an unclassified film or cause or permit such a film to be sold or delivered.

Penalty: \$1 000.

(2) Subsection (1) does not apply to the delivery of an unclassified film to the censor or the appeal censor for the purpose of having a decision made under this Act in relation to the film.

39—A person shall not exhibit or display, or cause or permit to be exhibited or displayed, in a public place or in such a manner that it is visible from a public place, the container, wrapping, or casing for an unclassified film where the container, wrapping, or casing bears a marking or other matter that suggests or indicates that the film has been classified under this Act.

Restriction on exhibition, display, of containers, &c., for unclassified films.

Penalty: \$1 000.

Division 3—Objectionable films

40—In this Division, “ objectionable film ” means a film that is an objectionable publication.

Interpretation: Division 3 of Part V.

41—(1) Subject to subsection (2), a person shall not sell or deliver an objectionable film or cause or permit such a film to be sold or delivered.

Prohibition on sale, &c., of objectionable films.

Penalty: \$5 000 or imprisonment for 12 months, or both.

(2) Subsection (1) does not apply to the delivery of an objectionable film to the censor or the appeal censor for the purpose of having a decision made under this Act in relation to the film.

(3) A person shall not exhibit or display, or cause or permit to be exhibited or displayed, an objectionable film in a public place or in such a manner that it is visible from a public place.

Penalty: \$1 000.

(4) A person shall not exhibit or display, or cause or permit to be exhibited or displayed, the container, wrapping, or casing for an objectionable film in a public place or in such a manner that it is visible from a public place.

Penalty: \$1 000.

(5) A person shall not screen an objectionable film or part of an objectionable film in the presence of a minor (other than a minor of which that person is the parent or guardian).

Penalty: \$1 000 or imprisonment for 3 months, or both.

Classification
or subsequent
classification
of film.

42—A person shall not be convicted of an offence against this Division if it is proved that—

- (a) the film was classified at the time the offence was alleged to have been committed; or
- (b) since the offence was alleged to have been committed the film has been classified,

and the act alleged to constitute the offence would not have constituted an offence against section 34 (1).

PART VI

SPECIAL OFFENCES IN RESPECT OF CERTAIN ACTS

Prohibition
against
production and
reproduction of
child abuse
publications
and bestiality
publications.

43—A person shall not—

- (a) print, photograph, record, or make a child abuse publication or a publication that describes, depicts, expresses, or otherwise deals with an act of bestiality, cause or permit such a publication to be printed, photographed, recorded, or made, or be in any way otherwise concerned in the printing, photographing, recording, or making of such a publication; or
- (b) reproduce a child abuse publication or a publication that describes, depicts, expresses, or otherwise deals with an act of bestiality, cause or permit such a publication to be reproduced, or be in any way otherwise concerned in the reproducing of such a publication.

Penalty: \$10 000 or imprisonment for 2 years, or both.

Prohibition
against
procurement
of certain
acts.

44—A person shall not invite or procure or attempt to procure a child to be in any way concerned in the making of a child abuse publication.

Penalty: \$10 000 or imprisonment for 2 years, or both.

PART VII

MISCELLANEOUS

45—(1) The Board shall maintain in a convenient form records of all decisions made by it and the records so maintained are in this section referred to as “ the official record ”.

Records and evidence of classification, &c.

(2) Any person is entitled, on making application to the Registrar in a manner approved by the Registrar, to inspect the official record.

(3) A certificate purporting to be signed by the Registrar certifying—

(a) that a publication specified in the certificate was classified on a day specified in the certificate and that the classification assigned to the publication was the classification specified in the certificate; or

(b) that a publication specified in the certificate had not, as at a day specified in the certificate, been classified, is admissible in any proceedings under this Act and shall, until the contrary is established, be evidence of the matters so certified.

(4) A certificate purporting to be signed by the censor certifying—

(a) that a film specified in the certificate was classified on a day specified in the certificate and that the classification assigned to the film was the classification specified in the certificate; or

(b) that a film specified in the certificate had not, as at a day specified in the certificate, been classified, is admissible in any proceedings under this Act and shall, until the contrary is established, be evidence of the matters so certified.

46—Proceedings for an offence against section 31 (1) or Division 3 of Part V shall not be instituted except with the written consent of the Crown Advocate.

Authority to prosecute.

47—Notwithstanding anything in the *Justices Act* 1959 to the contrary, proceedings in respect of an offence against section 44 may be commenced at any time within a period of 2 years after the time when the offence is alleged to have been committed.

Proceedings on prosecutions.

Offences by
principals
and bodies
corporate.

48—(1) Where an offence against this Act is committed by a person in or on any premises in or on which a business is carried on, each responsible person in respect of that business shall be deemed also to have committed the offence, and may be convicted of the offence unless he proves—

(a) that the offence was committed without his knowledge;
and

(b) that he took all such steps as were reasonable in the circumstances to prevent the offence from being committed.

(2) Where an offence against this Act is committed by a body corporate—

(a) every director, or member of the governing body, of the body corporate; and

(b) every manager or secretary of the body corporate, shall be deemed also to have committed the offence, and may be convicted of the offence, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

(3) A person referred to in subsection (2) may be convicted of an offence under that subsection whether or not the body corporate is charged with or convicted of the offence.

Matters averred
to in complaint.

49—(1) In any proceedings for an offence against this Act an averment in a complaint that a specified publication has been assigned a specified classification shall, in the absence of proof to the contrary, be accepted as proof—

(a) that the publication has been assigned that classification;
and

(b) that the publication was so classified on the day the act alleged to constitute the offence in the complaint was committed.

(2) In any proceedings for an offence against this Act an averment in a complaint that a person was a child or a minor shall, in the absence of proof to the contrary, be accepted as proof that the person was a child or, as the case may be, a minor, on the day the act alleged to constitute the offence in the complaint was committed.

50—(1) In any proceedings for an offence against this Act alleged to have been committed with respect to a child, it shall be a defence to show that at the time the offence was committed the defendant had reasonable grounds for believing that that person had attained the age of 16 years.

Defence to offence with respect to child or minor.

(2) In any proceedings for an offence against this Act alleged to have been committed with respect to a minor it shall be a defence to show that at the time the offence was committed the defendant had reasonable grounds for believing that that person had attained the age of 18 years or that he was married.

51—(1) For the purposes of ascertaining whether there is or has been a contravention of this Act or a failure to comply with this Act, a police officer of or above the rank of sergeant may, at any reasonable time, without warrant, enter any premises in or on which publications are sold or any other premises associated, or used in conjunction with, those premises.

Power to enter and seize.

(2) A police officer who has entered premises under the power conferred on him by subsection (1) may do all or any of the following things:—

- (a) examine any room in, or any part of, the premises and any publication or article within any such room or part;
- (b) require the production of any publications kept on those premises;
- (c) seize—
 - (i) any publication in respect of which he has reasonable grounds for believing that an offence against this Act has been or is being committed; or
 - (ii) any advertisement displayed contrary to the provisions of this Act.

(3) Where any publication or advertisement has been seized from any premises under this section and a Court has convicted a person of an offence against this Act in respect of that publication or advertisement it shall be forfeited to the Crown, and the publication or advertisement so forfeited shall be disposed of or destroyed in such manner as the Attorney-General may direct.

52—(1) The Governor may make regulations for the purposes of this Act.

Regulations.

(2) Without limiting the generality of subsection (1), the regulations may exempt any person or class of persons specified in the regulations from the operation of the Act or any prescribed part of the Act.

(3) The regulations may provide for a contravention of, or failure to comply with, any provision of the regulations to be an offence and for the imposition of a penalty not exceeding \$500 for such an offence.

Repeals.

53—The *Restricted Publications Act 1974* and the *Restricted Publications Act 1977* are repealed.

Savings and transitional provisions.

54—The savings and transitional provisions set out in Schedule 2 have effect.

SCHEDULE 1

Section 6

PROVISIONS WITH RESPECT TO MEMBERSHIP AND MEETINGS OF PUBLICATIONS
CLASSIFICATION BOARD

1—(1) A member shall be appointed for such term, not exceeding 3 years, Terms of office. as is specified in the instrument of his appointment.

(2) A member shall be eligible for re-appointment for such term or terms, not exceeding 3 years, as is specified in the instrument of his re-appointment.

2—(1) Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his time to the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office as a member of the Board or from accepting and retaining any remuneration payable to a member under clause 3. Provisions relating to members.

(2) The office of a member shall not, for the purposes of any Act, be deemed to be an office of profit under the Crown.

3—Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine, but no such determination shall apply in respect of a member who holds office in the Public Service without the approval of the Public Service Board. Remuneration of members.

4—The provisions of the *Public Service Act 1973* shall not apply to or in respect of the appointment of a member and a member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office. Public Service Act 1973 not to apply.

5—(1) The office of a member becomes vacant—

(a) when he dies;

(b) if he 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 or estate for their benefit;

(c) if he becomes liable to be detained under the *Mental Health Act 1963* in a hospital, being a hospital within the meaning of section 3 (1) of that Act;

Vacation of office.

(d) if he is convicted in this State of an offence which is punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in this State of an offence which, if committed in this State, would be a crime or an offence so punishable, or has been convicted, whether in this State or elsewhere, of a crime or offence for which he has been sentenced to imprisonment;

(e) if he is convicted of an offence against this Act;

(f) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation; or

(g) if he is removed from office by the Governor under subclause (2).

(2) The Governor may remove a member from office for misbehaviour or incompetence.

Filling of
casual
vacancies.

6—On the occurrence of a vacancy in the office of a member, the Governor may appoint a person to the vacant office for the balance of his predecessor's term of office.

Validity of
proceedings, &c.

7—(1) No act or proceeding of the Board or of any person acting pursuant to any direction of the Board is invalidated or prejudiced by reason only of the fact that at the time when the act or proceeding was done, taken, or commenced, there was a vacancy in the office of a member.

(2) All acts and proceedings of the Board or of any person acting pursuant to any direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of any member or that any person was disqualified from acting as, or incapable of being, a member, as valid as if that member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Board had been fully constituted.

Presumptions.

8—In any proceedings under this Act, unless evidence is given to the contrary, no proof shall be required of—

(a) the constitution of the Board;

(b) any resolution of the Board;

(c) the appointment of any member; or

(d) the presence of a quorum at any meeting of the Board.

Procedure at
meetings.

9—(1) Three members shall form a quorum at any meeting of the Board.

(2) Any meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.

(3) Questions arising at a meeting of the Board shall be determined by a majority of votes of the members present and voting.

10—(1) The chairman shall preside at all meetings of the Board at which ^{Chairman.} he is present.

(2) If the chairman is not present at a meeting of the Board the deputy chairman shall preside at that meeting.

(3) The chairman or if he is not present at a meeting of the Board, the deputy chairman, has a deliberative vote only and, in the event of an equality of votes on a matter before a meeting of the Board, that matter shall stand adjourned to the next meeting of the Board.

11—The procedure for the calling of, and for the conduct of business at, ^{General} meetings of the Board shall, subject to any procedure that is specified in this ^{procedure.} Schedule, be as determined by the Board.

SCHEDULE 2

Section 54

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation: 1—In this Schedule, the “repealed Act” means the *Restricted Publications Act 1974*.

Members of the Board.

2—(1) A person holding office, immediately before the commencement of this Schedule, as a member of the Restricted Publications Board shall be deemed to have been appointed under this Act as a member of the Publications Classification Board, and he shall, subject to this Act, hold office for the remainder of the period for which he was appointed under the repealed Act.

(2) The persons holding office as chairman and deputy chairman of the Restricted Publications Board under the repealed Act immediately before the commencement of this Schedule shall, subject to this Act, hold the offices of chairman and deputy chairman of the Publications Classification Board.

Registrar.

3—The person holding office under the repealed Act as Registrar of the Restricted Publications Board immediately before the commencement of this Schedule shall be deemed to have been appointed under this Act as Registrar of the Publications Classification Board.

Films.

4—(1) In this clause—

“Chief Censor” has the meaning assigned to that expression by the *Classification of Publications Ordinance 1983*;

“*Classification of Publications Ordinance 1983*” means the *Classification of Publications Ordinance 1983* of the Australian Capital Territory as amended from time to time.

(2) A film classified as a “G”, “PG”, “M”, or an “R” film under the *Classification of Publications Ordinance 1983* as at the date fixed by proclamation under section 2 (2) of this Act shall be deemed to have been classified as a “G”, “PG”, “M”, or an “R” film respectively under this Act.

(3) The classification of a film that is deemed, by virtue of subclause (2), to have been classified under this Act shall be deemed to have taken effect on the day on which notice of the decision to classify the film was published in the *Commonwealth Gazette* under the *Classification of Publications Ordinance 1983*.

(4) A certificate purporting to be signed by the Chief Censor certifying that a film specified in the certificate was classified under the *Classification of Publications Ordinance 1983* on a day specified in the certificate and that the classification assigned to the film was the classification specified in the certificate, is admissible in any proceedings under this Act and shall, until the contrary is established, be evidence of the matters so specified.