



Classification (Publications, Films and Computer Games) Act 1995

Act No. 7 of 1995 as amended

This compilation was prepared on 5 October 2007
taking into account amendments up to Act No. 179 of 2007

[**Note:** Part 10 ceases to have effect on 18 August 2012, *see* section 115]

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part 1—Preliminary	1
1 Short title [see Note 1].....	1
2 Commencement [see Note 1].....	1
3 Purpose.....	1
4 Powers and functions under State or Territory laws.....	1
5 Definitions.....	2
5A Meaning of <i>computer game</i>	6
5B <i>Exempt films</i> and <i>exempt computer games</i>	7
6 Amendments of the Code.....	8
6A Application of the <i>Criminal Code</i>	9
Part 2—Classification	10
Division 1—Preliminary	10
7 Types of classifications.....	10
8 Markings for classifications.....	11
Division 2—Classification of publications, films and computer games	12
9 Classification in accordance with the Code.....	12
9A Refused Classification for publications, films or computer games that advocate terrorist acts.....	12
10 Classifications in writing etc.	13
11 Matters to be considered in classification.....	13
12 Classification guidelines.....	13
13 Applications for classification of publications.....	14
13A Conditions of certain classifications for publications.....	15
14 Applications for classification of films.....	15
15 Discretion of Board.....	17
16 Board may decline to deal with application if more than one work involved.....	18
17 Applications for classification of computer games.....	18
18 Considered form of publication, film or computer game to be final.....	20
19 Screening of films and demonstration of computer games before classification.....	20
20 Board to decide consumer advice for publications, films and computer games.....	21
21 Declassification of classified films or computer games that are modified.....	22
21A Revocation of classification of films or computer games that are found to contain contentious material.....	22
21AA Revocation of classification of films containing additional content.....	22

22	Classification of publications, films or computer games containing advertisements	23
22A	Applications for classification for enforcement purposes.....	23
22B	Classification of a publication, film or computer game that may be the same as or similar to a classified item	24
22C	Validation of Board decisions etc. on applications by law enforcement agencies	25
Division 2A—Assessments of additional content		26
Subdivision A—Additional content assessors		26
22D	Additional content assessors.....	26
22E	Revocation of additional content assessor status	26
22F	Barring notice to additional content assessor.....	27
22G	Review by AAT.....	27
Subdivision B—Barring notices to applicants		28
22H	Barring notice to applicant	28
22J	Review by AAT.....	28
Division 3—Submittable publications		29
23	Calling in submittable publications for classification.....	29
Division 3A—Calling in films		30
23A	Calling in films for classification	30
Division 4—Calling in computer games		31
24	Calling in computer games for classification.....	31
Division 5—Notice of decisions		33
25	Classification certificates.....	33
26	Notice of decisions	33
27	Applications for information	34
28	When decisions take effect	35
Division 6—Certificates for exempt films or computer games		36
28A	Application for certificate.....	36
28B	Granting certificates	37
28C	Revocation of certificate.....	37
Part 3—Approval of advertisements		38
Division 1—Approval of general advertisements		38
29	Approval of advertisements.....	38
30	Calling in advertisements	39
Division 2—Advertising for unclassified films		41
31	Definitions.....	41
32	Certificates of exemption.....	41
33	Granting of certificates of exemption	41
34	Board may refuse certificate.....	42

35	Conditions of exemptions	42
36	Revocation of exemptions	42
37	Review of decision not to grant exemption	42
Part 4—Reclassification		43
38	Limit on reclassification	43
39	Reclassification etc. after 2 years	43
40	Notice of intention to reclassify etc.	44
41	Consideration of submissions	44
Part 5—Review of decisions		45
42	The persons who may apply for review	45
42A	Review Board may refuse to deal with certain applications	46
43	Applications for review	46
44	Dealing with applications	46
44A	Obtaining copies for review	47
44B	Validation of Review Board decisions etc. in relation to decisions on applications by law enforcement agencies	47
Part 6—The Classification Board		49
Division 1—Establishment of the Board		49
45	Establishment of Classification Board.....	49
46	Constitution of Board	49
47	Maximum number of members	49
48	Appointment of members	49
49	Full-time and part-time appointments.....	49
50	Temporary members.....	50
51	Terms and conditions of appointment	50
Division 2—Responsibilities and powers of the Director		51
52	Responsibilities and powers of the Director	51
53	Powers of Director under State/Territory laws	51
Division 4—Procedure of the Board		52
56	Board to regulate its procedure.....	52
57	Decisions of the Board	52
58	Procedures that apply to meetings of the Board	52
Division 5—Administrative provisions		54
59	Delegations.....	54
60	Remuneration and allowances	54
61	Leave of absence	54
62	Outside employment.....	55
63	Resignation.....	55
64	Disclosure of interests	55
65	Termination of appointment	55

66	Acting appointments.....	57
67	Annual report.....	57
Part 7—The Review Board		59
Division 1—Establishment of the Review Board		59
72	Establishment of Classification Review Board.....	59
73	Constitution of Review Board	59
74	Appointment of members of the Review Board	59
75	Members of the Review Board to be part-time.....	59
76	Terms and conditions of appointment	59
Division 2—Responsibilities and powers of the Convenor		61
77	Responsibilities and powers of the Convenor.....	61
Division 3—Procedure of the Review Board		62
78	Constitution of Review Board for the purpose of its functions.....	62
79	Decisions of the Review Board	62
Division 4—Administrative provisions		63
79A	Delegations.....	63
80	Remuneration and allowances	63
81	Resignation.....	63
82	Disclosure of interests	64
83	Termination of appointment	64
84	Acting appointments.....	65
85	Annual report.....	66
Part 8—Miscellaneous		67
87	Evidentiary certificates	67
87A	Board to make decisions within a specified time.....	67
87B	Review Board to make decisions within a specified time.....	67
88	Additional functions of Board	68
88A	Staff assisting the Board and the Review Board.....	68
89	Service of notices	68
90	Payments to the States and Territories.....	68
91	Waiver of fees	69
91A	Commonwealth not liable to pay a fee	70
91B	Cancellation of exemptions from fees	71
91C	Debts due to the Commonwealth.....	71
92	Act not to apply to broadcasting services under Broadcasting Services Act.....	71
92A	Proceedings arising out of administration of Board or Review Board.....	71
93	Regulations.....	72

Part 9—Transitional provisions and repeals	73
94	Definitions 73
95	Service of member of former Board or former Review Board 73
96	Decisions of former Board and former Review Board 73
97	Pending applications..... 74
97A	Reclassification 74
98	Repeals 74
Part 10—Material prohibited in prescribed areas	75
Division 1—Preliminary	75
99	Definitions 75
100	Concurrent operation of State and Territory laws..... 76
Division 2—Offences	78
101	Possession or control of level 1 prohibited material in prescribed areas 78
102	Possession or control of level 2 prohibited material in prescribed areas 78
103	Supplying prohibited material in and to prescribed areas 78
104	Body corporate managers taken to have committed offences 80
105	Division does not apply to postal services 80
Division 3—Seizure and forfeiture of prohibited material	81
106	Seizure of prohibited material 81
107	Seizure notices 81
108	Return of seized material—on request..... 82
109	Return of seized material—application to magistrate..... 82
110	Seized material forfeited to the Commonwealth..... 82
111	Relationship of Division to other laws 83
Division 4—Miscellaneous	84
112	Evidence 84
113	Compensation for acquisition of property 84
114	Minister may repeal provisions of this Part 84
115	Sunset provision [<i>see</i> Note 1] 85
Notes	87

An Act relating to the classification of publications, films and computer games, and related matters

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Classification (Publications, Films and Computer Games) Act 1995*.

2 Commencement [see Note 1]

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day to be fixed by Proclamation.
- (3) If the provisions referred to in subsection (2) do not commence under that subsection within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

3 Purpose

The purpose of this Act is to provide for the classification of publications, films and computer games for the Australian Capital Territory. This Act is intended to form part of a Commonwealth/State/Territory scheme for the classification of publications, films and computer games and for the enforcement of those classifications.

Note: Provisions dealing with the consequences of not having material classified and the enforcement of classification decisions are to be found in complementary laws of the States and Territories.

4 Powers and functions under State or Territory laws

The Board, the Review Board, the Director and the Convenor may exercise powers and perform functions relating to the classification of publications, films and computer games that are conferred on

Section 5

them under an arrangement between the Commonwealth and a State or the Commonwealth and the Northern Territory.

5 Definitions

In this Act, unless the contrary intention appears:

additional content in a film that also comprises a classified film or an exempt film includes, but is not limited to:

- (a) additional scenes for the classified film or exempt film (such as alternative endings or deleted scenes); and
- (b) a film of the making of the classified film or exempt film; and
- (c) interviews with, and commentaries by, directors, actors and other persons involved with the making of the classified film or exempt film; and
- (d) such other material as is prescribed by the regulations;

but does not include:

- (e) a work; or
- (f) such other material as is prescribed by the regulations.

additional content assessor means a person who is authorised by the Director under section 22D.

add-on means a computer program, data associated with a computer program or a computer program and any associated data referred to in subsection 5A(2).

advertisement for a publication, a film or a computer game means any form of advertising for the publication, film or game, and includes:

- (a) advertising, whether visual or audible, whether in the form of written or spoken words or other sounds and whether in a book, paper, magazine, poster, photograph, sketch, program, film or slide or in any other form; and
- (b) advertising on a container or wrapping enclosing the publication, film or game; and
- (c) advertising on an item of clothing advertising the publication, film or game;

but does not include:

- (d) advertising for an exempt film or exempt computer game; or

- (e) advertising, in an imported publication, for a publication, film or computer game that has not been published in Australia; or
- (f) advertising, in an imported film or computer game that is in a form that cannot be modified, for a film or computer game that has not been published in Australia (the ***advertised film or game***), whether or not the advertised film or game is later published in Australia.

adult means a person who is 18 or older.

Board means the Classification Board.

business day means a day other than a Saturday, Sunday or public holiday.

classifiable elements has the same meaning as in the Guidelines determined under subsection 12(1) and as in force from time to time.

classification certificate means a certificate issued under section 25.

classified means classified under this Act.

Code means the National Classification Code, set out in the Schedule to this Act as originally enacted, as amended in accordance with section 6.

computer generated image means an image (including an image in the form of text) produced by use of a computer on a computer monitor, television screen, liquid crystal display or similar medium from electronically recorded data.

contentious material, in relation to a film or computer game, means material that would be likely to cause it to be classified:

- (a) for a film—M or a higher classification; or
- (b) for a computer game—M or a higher classification.

Convenor means the Convenor of the Review Board.

decision means a decision of the Board:

- (a) to classify or refuse to classify a publication, film or computer game (including a decision of the Board under section 39 or 97A); or

Section 5

- (b) to determine the consumer advice to apply to a publication, film or computer game; or
- (c) to approve or refuse to approve an advertisement for a publication, film or computer game (including a decision of the Board under section 39) or to impose conditions on such an approval; or
- (d) to grant a certificate of exemption for a film; or
- (e) to decline to deal with or to deal further with an application under this Act; or
- (f) to make or refuse to make a declaration under subsection 13(3); or
- (g) to revoke such a declaration; or
- (h) to impose a condition under section 13A; or
- (i) to revoke the classification of a film or computer game under section 21A; or
- (ia) to revoke the classification of a film under section 21AA; or
- (j) to revoke the classification of, or consumer advice for, a publication, film or computer game under section 22B; or
- (k) to grant or refuse to grant a certificate under Division 6 of Part 2; or
- (l) to revoke such a certificate.

demonstrate includes exhibit, display, screen, play or make available for playing.

Deputy Director means the Deputy Director of the Board.

determined markings means markings determined by the Director under section 8.

Director means the Director of the Board.

enforcement application means an application that is made:

- (a) by the Commonwealth, a State or a Territory, or by an authority or agency of the Commonwealth, a State or a Territory; and
- (b) for the purpose of investigating or prosecuting an offence against a law of the Commonwealth, a State or a Territory.

exempt computer game has the meaning given by section 5B, and includes a game for which a certificate is in force under Division 6 of Part 2.

exempt film has the meaning given by section 5B, and includes a film for which a certificate is in force under Division 6 of Part 2.

film includes a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image, including a computer generated image, can be produced (together with its sound track), but does not include:

- (a) a computer game; or
- (b) an advertisement for a publication, a film or a computer game.

interactive film means a film to which subsection 14(4) applies.

interactive game means a game in which the way the game proceeds and the result achieved at various stages of the game is determined in response to the decisions, inputs and direct involvement of the player.

member means a member of the Board, and includes a temporary member.

minor means a person under 18.

participating Minister means a Minister of a State or Territory who is responsible for censorship matters where the State or Territory is a participant in the scheme referred to in section 3, but does not include such a Minister in relation to action to be taken under a provision of this Act if:

- (a) the action relates to publications, films or computer games; and
- (b) the State or Territory does not participate in the scheme in relation to publications, films or computer games, as the case may be.

publication means any written or pictorial matter, but does not include:

- (a) a film; or
- (b) a computer game; or
- (c) an advertisement for a publication, a film or a computer game.

publish includes sell, offer for sale, let on hire, exhibit, display, distribute and demonstrate.

Section 5A

Review Board means the Classification Review Board.

submittable publication means an unclassified publication that, having regard to section 9A or to the Code and the classification guidelines to the extent that they relate to publications, contains depictions or descriptions that:

- (a) are likely to cause the publication to be classified RC; or
- (b) are likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication; or
- (c) are unsuitable for a minor to see or read.

temporary member means a person appointed under section 50.

work means:

- (a) a cinematic composition that appears to be:
 - (i) self-contained; and
 - (ii) produced for viewing as a discrete entity; or
- (aa) a television program; or
- (b) a computer game that is produced for playing as a discrete entity;

but does not include an advertisement.

5A Meaning of *computer game*

- (1) A **computer game** is a computer program and any associated data capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows the playing of an interactive game.
- (2) A computer program, data associated with a computer program or a computer program and any associated data that:
 - (a) is capable of generating new elements or additional levels into a game (the **original game**) that is a computer game under subsection (1); and
 - (b) is contained in a device separate from that containing the original game;is also a **computer game**.
- (3) However, a **computer game** does not include an advertisement for a publication, film or computer game.

5B Exempt films and exempt computer games

- (1) Subject to subsection (3), a film specified in this table is an *exempt film*. Applications for classification of exempt films are not necessary.

Exempt films		
Item	Type	Description
1	Business	A film of a promotional, technical or similar nature for use in the course of a business or trade
2	Accounting	A film for use in the keeping or verification of accounts
3	Professional	A film of a promotional, technical or similar nature for use in the course of a profession
4	Scientific	A film for use pursuant to a branch of knowledge conducted on objective principles involving the systemised observation of, and experiment with, phenomena
5	Educational	A film whose main purpose is for training, instruction or reference, as a manual, a lesson, an encyclopaedia or a guide
6	Current affairs	A film wholly comprising news reports or information about, or analysis of, current issues or events of public interest or importance
7	Hobbyist	A film wholly comprising a documentary record of a hobby or activity
8	Sporting	A film wholly comprising a documentary record of a sporting event
9	Family	A film wholly comprising a documentary record of a family event or activity
10	Live performance	A film wholly comprising a documentary record of a live artistic performance or that is used within such a performance
11	Musical presentation	A film wholly comprising a musical presentation
12	Religious	A film wholly comprising a documentary record of a religious event or activity
13	Community or cultural	A film wholly comprising a documentary record of a community or cultural activity or event

Section 6

- (2) Subject to subsection (3), a computer game is an ***exempt computer game*** if it forms part of or is included in computer software specified in this table. Applications for classification of exempt computer games are not necessary.

Exempt computer games

Item	Type	Description
1	Business	Software for use in the course of a business or trade
2	Accounting	Software for use in the keeping or verification of accounts
3	Professional	Software for use in the course of a profession
4	Scientific	Software for use pursuant to a branch of knowledge conducted on objective principles involving the systemised observation of, and experiment with, phenomena
5	Educational	Software whose main purpose is for training, instruction or reference, as a manual, a lesson, an encyclopaedia or a guide

Exceptions

- (3) However, a film or computer game is not an ***exempt film*** or an ***exempt computer game*** if it contains:
- (a) an advertisement that has been refused approval; or
 - (b) an advertisement for an unclassified film or computer game; or
 - (c) an advertisement for a film, or for a computer game, that has been classified M or a higher classification; or
 - (d) material that would be likely to cause the film or computer game to be classified M or a higher classification.

6 Amendments of the Code

- (1) The Code may be amended from time to time in accordance with this section.
- (2) If the Minister and each participating Minister agree to an amendment of the Code, the Code is taken to be amended accordingly.

- (3) If the Code is amended, the Minister must cause a copy of the amended Code to be published in the *Gazette*.

6A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 2—Classification

Division 1—Preliminary

7 Types of classifications

- (1) The following are the different types of classifications for publications in ascending order:

Unrestricted

Category 1 restricted

Category 2 restricted

RC Refused Classification.

- (2) The following are the different types of classifications for films in ascending order:

G General

PG Parental Guidance

M Mature

MA 15+ Mature Accompanied

R 18+ Restricted

X 18+ Restricted

RC Refused Classification.

- (3) The following are the different types of classifications for computer games in ascending order:

G General

PG Parental Guidance

M Mature

MA 15+ Mature Accompanied

RC Refused Classification.

- (4) In subsections (1) to (3), text that is not in bold is included by way of explanation and does not form part of the classification.

8 Markings for classifications

- (1) The Director may, by notice in the *Gazette*, determine:
- (a) markings for each type of classification giving information about the classification; and
 - (b) the manner in which the markings are to be displayed.
- (2) A determination may specify additional material for markings for an add-on.
- (3) A determination may specify additional material for markings for a publication that has been classified subject to a condition under section 13A.
- (4) A determination may specify:
- (a) markings for a film or computer game for which a certificate is in force under Division 6 of Part 2; and
 - (b) the manner in which the markings are to be displayed.

Division 2—Classification of publications, films and computer games

9 Classification in accordance with the Code

Subject to section 9A, publications, films and computer games are to be classified in accordance with the Code and the classification guidelines.

9A Refused Classification for publications, films or computer games that advocate terrorist acts

- (1) A publication, film or computer game that advocates the doing of a terrorist act must be classified RC.
- (2) Subject to subsection (3), for the purposes of this section, a publication, film or computer game *advocates* the doing of a terrorist act if:
 - (a) it directly or indirectly counsels or urges the doing of a terrorist act; or
 - (b) it directly or indirectly provides instruction on the doing of a terrorist act; or
 - (c) it directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment (within the meaning of section 7.3 of the *Criminal Code*) that the person might suffer) to engage in a terrorist act.
- (3) A publication, film or computer game does not advocate the doing of a terrorist act if it depicts or describes a terrorist act, but the depiction or description could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire.
- (4) In this section:

terrorist act has the meaning given by section 100.1 of the *Criminal Code* (no matter where the action occurs, the threat of action is made or the action, if carried out, would occur).

Note: The definition of *terrorist act* in that section covers actions or threats of actions.

10 Classifications in writing etc.

- (1) Classifications of publications, films and computer games are to be made by the Board in writing on application.
- (2) Subsection (1) does not require an application for a reclassification of a publication, film or computer game under section 39 or a reclassification of a publication or film under section 97A.

11 Matters to be considered in classification

The matters to be taken into account in making a decision on the classification of a publication, a film or a computer game include:

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) the literary, artistic or educational merit (if any) of the publication, film or computer game; and
- (c) the general character of the publication, film or computer game, including whether it is of a medical, legal or scientific character; and
- (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.

12 Classification guidelines

- (1) The Minister may, with the agreement of each participating Minister, determine guidelines to assist the Board in applying the criteria in the Code.
- (2) The Minister must cause a copy of the guidelines to be published in the *Gazette*.
- (3) If the Minister and each participating Minister agree to an amendment of the guidelines, the guidelines are taken to be amended accordingly.
- (4) If the guidelines are amended, the Minister must cause a copy of the amended guidelines to be published in the *Gazette*.

Section 13

13 Applications for classification of publications

- (1) An application for classification of a publication (other than an enforcement application—see section 22A) must be:
 - (a) in writing; and
 - (b) made in a form approved by the Director in writing; and
 - (c) signed by or on behalf of the applicant; and
 - (d) accompanied by:
 - (i) the prescribed fee for that category of publication; and
 - (ii) a copy of the publication.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

- (2) If an application is made for classification of a publication that is an issue of a periodical (the *original issue*), the applicant may request that the classification granted for the original issue apply also to all or some future issues.
- (3) The Board may, if the applicant pays the prescribed fee (if any), declare that the classification granted for the original issue applies also to:
 - (a) all future issues; or
 - (b) a specified number of future issues; or
 - (c) all future issues published within a specified period.
- (4) In deciding whether to make a declaration under subsection (3), the Board must have regard to written principles determined by the Director and agreed to by the Minister. The Minister may only agree to the principles if the Minister has consulted the participating Ministers about them.
- (5) If the Board makes a declaration under subsection (3) for some or all future issues of a publication and the Board is of the opinion that an issue of the publication covered by the declaration:
 - (a) contains material that, if the issue 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;the Board must revoke the declaration so far as it affects that issue and any future issues. The Board must also revoke approval of any approved advertisement for those issues of the publication.

13A Conditions of certain classifications for publications

- (1) The Board may, if it classifies a publication Unrestricted, impose a condition that it not be sold, displayed for sale or delivered unless it is contained in a sealed package.
- (2) The Board may, if it classifies a publication Category 1 restricted, impose a condition that it not be sold, displayed for sale or delivered unless it is contained in a sealed package made of plain, opaque material.

14 Applications for classification of films

General rules

- (1) An application for classification of a film (other than an enforcement application—see section 22A) must be:
 - (a) in writing; and
 - (b) made in a form approved by the Director in writing; and
 - (c) signed by or on behalf of the applicant; and
 - (d) accompanied by:
 - (ia) a copy of the film; and
 - (i) the prescribed fee for that category of film; and
 - (ii) an adequate written synopsis of the film in English that includes a statement or summary of any incidents, or of the plot, depicted or intended to be depicted by the film.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.
- (2) An application for classification of a film may be accompanied by a copy of any advertisement that is proposed to be used to advertise the film.

Additional rule for films comprising computer generated images

- (4) If:
 - (a) an application is made for classification of a film (other than an enforcement application—see section 22A) that comprises a recording from which a computer generated image can be produced; and
 - (b) the recording enables a person using it to choose from 2 or more visual images the image that will be viewed;

Part 2 Classification

Division 2 Classification of publications, films and computer games

Section 14

the application must include particulars of any contentious material in the film and of the means by which access to that material may be gained.

Additional rules for films comprising classified films, exempt films and additional content

- (5) If:
- (a) an application is for classification of a film that comprises:
 - (i) one or more classified films and additional content; or
 - (ii) one or more classified films, one or more exempt films and additional content; or
 - (iii) one or more exempt films and additional content; and
 - (b) the applicant is of the opinion that the film would, if classified, be classified at a particular classification that is R 18+ or a lower classification; and
 - (c) a notice under section 22H is not in force in relation to the applicant;
- the applicant may also submit with the application an assessment of the additional content prepared by an additional content assessor and signed by, or on behalf of, the applicant.
- (6) An assessment under subsection (5) must:
- (a) if the film includes one classified film—describe, and report on the impact of, any classifiable elements in the additional content that are at the same or higher level as the classified film; and
 - (b) if the film includes more than one classified film—describe, and report on the impact of, any classifiable elements in the additional content that are at the same or higher level as the classified film with the highest classification; and
 - (c) if the film does not include a classified film—describe, and report on the impact of, all classifiable elements in the additional content; and
 - (d) recommend a classification of the additional content; and
 - (e) recommend consumer advice appropriate to the additional content; and
 - (f) deal with any other matter prescribed by the regulations.

- (7) If the Director or the Board disagrees with the recommended classification of the additional content, the Director must give a notice in writing to the applicant:
- (a) stating the particulars of the disagreement; and
 - (b) inviting the applicant to make, within 14 days after receiving the notice, any additional submissions the applicant may wish to make before the Board makes a decision on the application.

15 Discretion of Board

- (1) If:
- (a) an application is made for the classification as a film of a recording that contains a computer generated image; and
 - (b) the Board is of the opinion that the recording is more appropriately dealt with as a computer game having regard to:
 - (i) the definition of **computer game** in section 5A; and
 - (ii) the degree of interactivity involved; and
 - (iii) the nature of the visual images produced;
- the Board must decline to deal with the application.
- (1A) If:
- (a) an application is made for the classification of material as a computer game; and
 - (b) the Board is of the opinion that the material is more appropriately dealt with as a film having regard to:
 - (i) the definition of **film** in section 5; and
 - (ii) whether, or the extent to which, the material is or involves an interactive game;
- the Board must decline to deal with the application.
- (2) If the Board declines to deal with the application under this section, the Director must, within 14 days after the decision is made:
- (a) notify the applicant in writing of the decision and of the reasons for the decision; and
 - (b) if the application is not an enforcement application—invite the applicant to provide the additional material that is necessary for an application for classification of a computer game or of a film, as the case requires.

Section 16

- (3) If the application is not an enforcement application, the Board must deal with the application as an application for classification of a computer game or of a film, as the case requires, after receiving the additional material and fee required.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

- (4) If the application is an enforcement application, the Board must deal with the application as an application for classification of a computer game or of a film, as the case requires, after receiving the applicant's request that the Board do so. The applicant must pay any additional fee on or after making the request.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

16 Board may decline to deal with application if more than one work involved

- (1) If:
- (a) an application is made for classification of a film or computer game; and
 - (b) the film or game is contained on more than one device and each device contains a separate work;
- the Board may decline to deal with the application.
- (2) If the Board declines to deal with the application under this section, the Director must, within 14 days after the decision is made:
- (a) notify the applicant in writing of the decision and of the reasons for the decision; and
 - (b) invite the applicant to submit an application for classification of each work as a separate film or computer game.

17 Applications for classification of computer games

- (1) An application for classification of a computer game (other than an enforcement application—see section 22A) must be:
- (a) in writing; and
 - (b) made in a form approved by the Director in writing; and
 - (c) signed by or on behalf of the applicant; and
 - (ca) accompanied by a copy of the game unless the game is an amusement or circuit board game that, in the opinion of the

Board, is physically impracticable to submit to the Board's premises for classification; and

- (cb) if the application is for classification of a computer game that is an add-on—accompanied by a copy of the computer game into which the add-on is capable of generating new elements or additional levels; and
- (d) accompanied by the prescribed fee for that category of game; and
- (e) accompanied by a document setting out:
 - (i) the title of the game; and
 - (ii) the year of production; and
 - (iii) the name of the publisher; and
 - (iv) the country of origin; and
 - (v) a description of game play.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

- (2) If any part of a computer game is likely to be regarded as containing contentious material, the application must also be accompanied by:
 - (a) particulars of that material and of the means by which access to it may be gained; or
 - (b) a separate recording of that material.
- (2A) If the application is for a computer game that is an add-on, the Board must classify the add-on with the computer game into which the add-on is capable of generating new elements or additional levels.
- (3) If the applicant is of the opinion that the game would, if classified, be classified G, PG or M, the applicant may also submit with the application:
 - (a) an assessment of the computer game, signed by or on behalf of the applicant and prepared by a person authorised by the Director for the purpose, including:
 - (i) a recommended classification of the game; and
 - (ii) consumer advice appropriate to the game; and
 - (b) a copy of any advertisement that is proposed to be used to advertise the game.

Part 2 Classification

Division 2 Classification of publications, films and computer games

Section 18

- (4) If the Director or the Board disagrees with the recommended classification, the Director must give a notice in writing to the applicant:
 - (a) stating the particulars of the disagreement; and
 - (b) inviting the applicant to make, within 14 days after receiving the notice, any additional submissions the applicant may wish to make before the Board makes a decision on the application.
- (5) The Director may authorise a person for the purpose of subsection (3) only if the person has completed training approved by the Director in the making of assessments.

18 Considered form of publication, film or computer game to be final

- (1) The Board must assume, in classifying a publication, film or computer game, that the publication, film or game will be published only in the form in which it is considered for classification.

19 Screening of films and demonstration of computer games before classification

- (1) The Board may decline to deal with an application for classification of a film or a computer game, or decline to deal further with the application, unless:
 - (a) the applicant:
 - (i) provides a copy of the film or game for screening or demonstration before the Board; or
 - (ii) for an amusement or circuit board game referred to in paragraph 17(1)(ca) or subsection 22A(3)—allows the Board access to the game; and
 - (b) in the opinion of the Board, the copy of the film or game provided is complete and is adequate to allow a proper consideration of the application.
- (1A) The Board may decline to deal with an application for classification of an interactive film, or decline to deal further with the application, unless the applicant demonstrates the film before the Board.

- (2) The Board may decline to deal with an application for classification of a computer game, or decline to deal further with the application, unless the applicant demonstrates the computer game before the Board.
- (3) The Director must notify the applicant in writing of a decision under subsection (1), (1A) or (2).
- (4) The applicant and not more than 4 representatives of the applicant, and any other persons approved by the Director, are entitled to be present at a screening or demonstration.
- (5) A screening or demonstration must take place at a reasonable time and place specified by the Director.
- (6) The Director may keep the copy of the film or game or, if the Director and the applicant agree, another copy of the film or game, for as long as the Director requires.
- (7) Neither the Commonwealth nor a member is liable for any damage caused to a copy of a film or a computer game as a result of a screening or a demonstration.

20 Board to decide consumer advice for publications, films and computer games

- (1) If the Board:
 - (a) classifies a film PG, M, MA 15+, R 18+ or X 18+; or
 - (b) classifies a computer game PG, M or MA 15+;it must determine consumer advice giving information about the content of the film or game.
- (2) If the Board:
 - (a) classifies a publication Unrestricted; or
 - (b) classifies a film or computer game G;it may determine consumer advice giving information about the content of the publication, film or game.

Section 21

21 Declassification of classified films or computer games that are modified

- (1) Subject to subsection (2), if a classified film or a classified computer game is modified, it becomes unclassified when the modification is made.
- (2) Subsection (1) does not apply to a modification that consists of:
 - (a) including or removing an advertisement, other than an advertisement to which section 22 applies; or
 - (b) for an imported film or computer game that was in a form that cannot be modified and has subsequently been converted to a form that can be modified—removing, from the film or game, material that was advertising referred to in paragraph (f) of the definition of *advertisement* in section 5.

21A Revocation of classification of films or computer games that are found to contain contentious material

If the Board is of the opinion that:

- (a) a classified interactive film or a classified computer game contains contentious material (whether activated through use of a code or otherwise) that was not brought to the Board's attention in accordance with subsection 14(4) or 17(2) before the classification was made; and
- (b) if the Board had been aware of the material before the classification was made, it would have given the film or game a different classification;

the Board must revoke the classification, and must also revoke approval of any approved advertisement for the film or game.

21AA Revocation of classification of films containing additional content

The Board must revoke the classification of a film that has been classified taking into account an assessment prepared by an additional content assessor under subsection 14(5) if it is satisfied that:

- (a) the additional content contains any classifiable elements that:

- (i) were not brought to the Board's attention in accordance with paragraph 14(6)(a), (b) or (c) before the classification was made; or
 - (ii) were brought to the Board's attention in accordance with paragraph 14(6)(a), (b) or (c) before the classification was made but the assessment of the elements was misleading, incorrect or grossly inadequate; and
- (b) if the Board had been aware of the matters mentioned in subparagraph (a)(i) or (ii) before the classification was made, it would have given the film a different classification.

Note: The regulations may prescribe circumstances in which an assessment is taken to be misleading, incorrect or grossly inadequate: see subsection 93(2).

22 Classification of publications, films or computer games containing advertisements

- (1A) A publication must not be classified if it contains an advertisement that has been refused approval.
- (1) A film or computer game must not be classified if it contains:
- (a) an advertisement for a film or computer game that has not been classified; or
 - (b) an advertisement:
 - (i) for a film or computer game that has a higher classification; or
 - (ii) that has been refused approval.
- (2) Subsection (1A) or (1) does not prevent a publication, film or computer game from being classified if the application for the classification was an enforcement application.

22A Applications for classification for enforcement purposes

- (1) An application for classification of a publication, film or computer game that is an enforcement application must be:
- (a) in writing; and
 - (b) made in a form approved by the Director in writing; and
 - (c) signed by or on behalf of the applicant; and

Part 2 Classification

Division 2 Classification of publications, films and computer games

Section 22B

- (d) accompanied by a copy of the publication, film or computer game.
- (2) The applicant must pay the prescribed fee for the application. However, the fee need not accompany the application.
Note: For an applicant that is the Commonwealth or a Commonwealth authority: see section 91A.
- (3) An enforcement application for classification of a computer game does not have to be accompanied by a copy of the game if the game is an amusement or circuit board game that, in the opinion of the Board, is physically impracticable to submit to the Board's premises for classification.

22B Classification of a publication, film or computer game that may be the same as or similar to a classified item

- (1) The Board may proceed to classify a publication, film or computer game (the *new item*) if:
 - (a) an application is made for its classification; and
 - (b) the Board is of the opinion that the new item may be the same as or similar to another publication, film or game that has already been classified (the *classified item*); and
 - (c) the Board does not have a copy of the classified item and a copy is not available to it; and
 - (d) the Board is not able to ascertain from its records whether the items are identical.
- (2) A classification by the Board of the new item is valid even though the Board may discover, after the classification of the new item, that it is the same as the classified item.
- (3) If:
 - (a) the Board obtains a copy of the classified item; and
 - (b) the Board decides that it is the same as the new item but:
 - (i) the classifications for the classified item and the new item are different; or
 - (ii) the consumer advice for the classified item and the new item are different;the Board must revoke the classification or consumer advice for the classified item.

22C Validation of Board decisions etc. on applications by law enforcement agencies

- (1) A decision (the *original decision*) made by the Board (whether before or after the commencement of this section) on an application:
 - (a) made by or on behalf of a law enforcement agency of the Commonwealth, a State or a Territory; and
 - (b) that did not satisfy the requirements of this Act for the making of the application;is as valid, and is taken always to have been as valid, as it would have been if the application had satisfied those requirements.
- (2) Any later decision made, or any later action taken by, the Board, the Review Board, the Director or the Convenor under this Act (whether before or after the commencement of this section) on the basis of the original decision is as valid, and is taken always to have been as valid, as it would have been if the original decision had been made on an application that satisfied the requirements of this Act for the making of the application.

Division 2A—Assessments of additional content

Subdivision A—Additional content assessors

22D Additional content assessors

- (1) Subject to subsection (2), the Director may, in writing, authorise a person to prepare assessments of additional content under subsection 14(5).
- (2) The Director must not authorise a person if:
 - (a) a notice under section 22F is in force in relation to the person; or
 - (b) the person has not completed training approved by the Director in the making of assessments.

22E Revocation of additional content assessor status

- (1) The Director may, in writing, revoke an authorisation in relation to an additional content assessor if the Director is satisfied that one or more of the conditions mentioned in subsection (2) apply to the additional content assessor.
- (2) The conditions are as follows:
 - (a) the additional content assessor has prepared an assessment of the additional content in a film and the additional content contains classifiable elements that:
 - (i) were not brought to the Board's attention in accordance with paragraph 14(6)(a), (b) or (c) before the classification was made; or
 - (ii) were brought to the Board's attention in accordance with paragraph 14(6)(a), (b) or (c) before the classification was made but the assessment of the elements was misleading, incorrect or grossly inadequate;
 - (b) if the Director has requested the additional content assessor complete further training approved by the Director in the making of assessments—the additional content assessor has not completed the training;

- (c) the additional content assessor has prepared at least two assessments under subsection 14(5) which contain misleading, incorrect or grossly inadequate information;
- (d) any other conditions prescribed by the regulations.

Note: The regulations may prescribe circumstances in which an assessment is taken to be misleading, incorrect or grossly inadequate, or to contain misleading, incorrect or grossly inadequate information: see subsection 93(2).

22F Barring notice to additional content assessor

- (1) The Director may give a written notice to a person if the Director is satisfied that:
 - (a) both of the following apply:
 - (i) the Board classified a film taking into account an assessment of the additional content in the film prepared by the person;
 - (ii) the Board has revoked the classification of the film under section 21AA; or
 - (b) the person has prepared at least two assessments under subsection 14(5) which contain misleading, incorrect or grossly inadequate information; or
 - (c) the person meets any other condition set out in the regulations.

Note 1: If the Director gives a notice to a person under this subsection, the person cannot be authorised to prepare assessments of additional content while the notice remains in force: see section 22D.

Note 2: The regulations may prescribe circumstances in which an assessment is taken to contain misleading, incorrect or grossly inadequate information: see subsection 93(2).

- (2) The notice takes effect from the date specified in the notice and continues in force for the period specified in the notice. The period must not exceed 3 years.

22G Review by AAT

An application may be made to the Administrative Appeals Tribunal for review of a decision of the Director under subsection 22E(1) or 22F(1).

Subdivision B—Barring notices to applicants

22H Barring notice to applicant

- (1) The Director may give a written notice to a person if:
- (a) the person has submitted at least two applications that were accompanied by assessments under subsection 14(5); and
 - (b) the assessments contained misleading, incorrect or grossly inadequate information; and
 - (c) as a result of those assessments, the Director revoked the authorisation of the additional content assessors who prepared them.

Note 1: If the Director gives a notice to a person under this subsection, the person cannot submit an assessment of additional content with an application for classification of a film while the notice remains in force: see subsection 14(5).

Note 2: The regulations may prescribe circumstances in which an assessment is taken to contain misleading, incorrect or grossly inadequate information: see subsection 93(2).

- (2) The notice takes effect from the date specified in the notice and continues in force for the period specified in the notice. The period must not exceed 3 years.

22J Review by AAT

An application may be made to the Administrative Appeals Tribunal for review of a decision of the Director under subsection 22H(1).

Division 3—Submittable publications

23 Calling in submittable publications for classification

- (1) If:
 - (a) the Director has reasonable grounds to believe that a publication is a submittable publication; and
 - (b) the publication is being published in the Australian Capital Territory, or the Director has reasonable grounds to believe that it will be published in the Australian Capital Territory;the Director may, by notice in writing given to the publisher of the publication, require the publisher to submit an application for classification of the publication, or of subsequent issues of the publication, by the Board.
- (2) The Director must cause notice of a decision under subsection (1) to be published in the *Gazette*.
- (3) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.

Penalty: 20 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that he or she did not intend to:
 - (a) publish the publication in the Australian Capital Territory; or
 - (b) cause, authorise, permit or licence the publication to be published in the Australian Capital Territory.

Division 3A—Calling in films

23A Calling in films for classification

- (1) If:
 - (a) the Director has reasonable grounds to believe that an unclassified film is not an exempt film; and
 - (b) the film is being published in the Australian Capital Territory, or the Director has reasonable grounds to believe that it will be published in the Australian Capital Territory;the 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 Director must cause notice of a decision under subsection (1) to be published in the *Gazette*.
- (3) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.

Penalty: 20 penalty units.
- (4) An offence against subsection (3) is a strict liability offence.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that he or she did not intend to:
 - (a) publish the film in the Australian Capital Territory; or
 - (b) cause, authorise, permit or licence the film to be published in the Australian Capital Territory.

Division 4—Calling in computer games

24 Calling in computer games for classification

- (1) If:
- (a) the Director has reasonable grounds to believe that a computer game is likely to contain contentious material; and
 - (b) the computer game is being published in the Australian Capital Territory, or the Director has reasonable grounds to believe that it will be published in the Australian Capital Territory;
- the Director may, by notice in writing given to the publisher of the game, require the publisher to submit an application for classification of the game.

- (1A) If:
- (a) the Director has reasonable grounds to believe that an unclassified computer game is not an exempt computer game; and
 - (b) the game is being published in the Australian Capital Territory, or the Director has reasonable grounds to believe that it will be published in the Australian Capital Territory;
- the Director may, by notice in writing given to the publisher of the game, require the publisher to submit an application for classification of the game.

- (2) The Director must cause notice of a decision under subsection (1) or (1A) to be published in the *Gazette*.
- (3) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.

Penalty: 20 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Part 2 Classification

Division 4 Calling in computer games

Section 24

- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that he or she did not intend to:
- (a) publish the computer game in the Australian Capital Territory; or
 - (b) cause, authorise, permit or licence the computer game to be published in the Australian Capital Territory.

Division 5—Notice of decisions

25 Classification certificates

- (1) The Director must issue a classification certificate for each publication, film and computer game that is classified by the Board.
- (1A) The Convenor must issue a classification certificate for each publication, film and computer game that is classified by the Review Board.
- (1B) If:
 - (a) the Director has issued a classification certificate (the *first certificate*) for a publication, film or computer game; and
 - (b) the Convenor issues a classification certificate (the *second certificate*) for the publication, film or computer game;
the first certificate is taken to be revoked at the time the Convenor gives written notice to the applicant under subsection 26(3).
- (2) A classification certificate must include:
 - (a) the determined markings for the classification given to the publication, film or computer game; and
 - (b) for a film or computer game—any consumer advice for the film or game; and
 - (c) the applicant's obligations about the display of the determined markings and consumer advice.

26 Notice of decisions

Notice of decisions by the Board

- (1) The Director must give written notice of a decision of the Board to the applicant.
- (2) If there was no applicant, or the applicant is not the person on whose application an earlier decision was made, the Director must give the notice to the persons who, in his or her opinion, have an interest in the matter, whether as a publisher of the publication, film or computer game or otherwise.

Section 27

Notice of decisions by the Review Board

- (3) The Convenor must give written notice of a decision of the Review Board to:
- (a) the applicant; and
 - (b) the persons who, in the Convenor's opinion, have an interest in the matter, whether as a publisher of the publication, film or computer game or otherwise.

Time for giving notice

- (4) The notice must be given as soon as practicable, but not later than 30 days after the decision.

Certificate as notice of decision

- (5) A copy of the classification certificate is enough notice of the decision.

27 Applications for information

Applications to the Director

- (1) A person may apply to the Director for a copy of:
- (a) a classification certificate issued by the Director under subsection 25(1); or
 - (b) a notice given by the Director under subsection 26(1).
- (2) If the application is not an enforcement application, the Director must give the copy to the applicant after the applicant pays the prescribed fee.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

- (3) If the application is an enforcement application, the Director must give the copy to the applicant after the applicant makes the application. The applicant must pay the prescribed fee on or after making the application.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

Applications to the Convenor

- (4) A person may apply to the Convenor for a copy of:
- (a) a classification certificate issued by the Convenor under subsection 25(1A); or
 - (b) a notice given by the Convenor under subsection 26(3).
- (5) If the application is not an enforcement application, the Convenor must give the copy to the applicant after the applicant pays the prescribed fee.
- Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.
- (6) If the application is an enforcement application, the Convenor must give the copy to the applicant after the applicant makes the application. The applicant must pay the prescribed fee on or after making the application.
- Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

28 When decisions take effect

A decision takes effect on the day on which notice of the decision is given under section 26.

Division 6—Certificates for exempt films or computer games

28A Application for certificate

- (1) A person may apply in writing to the Board for a certificate that:
 - (a) an unclassified film is an exempt film; or
 - (b) an unclassified computer game is an exempt computer game.
- (2) An application must be:
 - (a) made in a form approved by the Director in writing; and
 - (b) signed by or on behalf of the applicant; and
 - (c) accompanied by:
 - (i) the prescribed fee for the relevant category of film or computer game; and
 - (ii) a copy of the film or game; and
 - (iii) if the application is for a computer game that is an add-on—accompanied by a copy of the game into which the add-on is capable of generating new elements or additional levels; and
 - (iv) a statement setting out (briefly) the grounds on which the certificate is sought; and
 - (v) for a film—particulars of any material that could cause it to be classified M or a higher classification and, if it is an interactive film, the means by which access to that material may be gained; and
 - (vi) for a game—particulars of any material that could cause the game to be classified M or a higher classification and of the means by which access to it may be gained.
- (3) The Board may decline to deal with an application for a certificate, or decline to deal further with the application, unless, in the opinion of the Board, the copy of the film or computer game provided is complete and is adequate to allow a proper consideration of the application.
- (4) The Board may decline to deal with an application for a certificate for an interactive film or a computer game, or decline to deal

further with the application, unless the applicant demonstrates the film or game before the Board.

28B Granting certificates

The Board may grant a certificate stating that:

- (a) the film is an exempt film; or
- (b) the computer game is an exempt computer game.

28C Revocation of certificate

If the Board grants a certificate under this Division for a film or a computer game and the Board decides that it contains material that was not brought to the Board's attention before the certificate was granted and that would cause the film or game to be classified:

- (a) for a film—M or a higher classification; or
 - (b) for a game—M or a higher classification;
- the Board must revoke the certificate.

Part 3—Approval of advertisements

Division 1—Approval of general advertisements

29 Approval of advertisements

- (1) The Board may approve or refuse to approve an advertisement for a publication, a film or a computer game either on an application for approval or on its own initiative. An approval of an advertisement may be subject to conditions.
- (2) An application for approval of an advertisement must be:
 - (a) in writing; and
 - (b) made in a form approved by the Director in writing; and
 - (c) signed by or on behalf of the applicant; and
 - (d) accompanied by the prescribed fee for that category of advertisement.
- (3) The matters to be taken into account in deciding whether to approve an advertisement include the matters set out in section 11 and the classification guidelines referred to in section 12.
- (4) The Board must refuse to approve an advertisement if, in the opinion of the Board, the advertisement:
 - (a) describes, depicts or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it should not be approved; or
 - (b) depicts or describes, in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or
 - (c) promotes crime or violence, or incites or instructs in matters of crime or violence; or
 - (d) is used, or is likely to be used, in a way that is offensive to a reasonable adult.

- (5) The Board must refuse to approve an advertisement for a publication if the publication:
 - (a) has been classified RC; or
 - (b) is an unclassified submittable publication.
- (6) The Board must refuse to approve an advertisement for a film or a computer game that:
 - (a) has been classified RC; or
 - (b) has not been classified.
- (7) Paragraph (6)(b) does not apply to a film for which a certificate of exemption is in force under section 33.

30 Calling in advertisements

- (1) The Director may, by notice in writing given to:
 - (a) the publisher of a publication that:
 - (i) the Director has reasonable grounds to believe is a submittable publication; and
 - (ii) is being published in the Australian Capital Territory, or the Director has reasonable grounds to believe will be published in the Australian Capital Territory; or
 - (b) the publisher of a classified film that is being published in the Australian Capital Territory, or that the Director has reasonable grounds to believe will be published in the Australian Capital Territory; or
 - (c) the publisher of a computer game that is being published in the Australian Capital Territory, or that the Director has reasonable grounds to believe will be published in the Australian Capital Territory;

require the publisher to submit to the Board for approval a copy of every advertisement used or intended to be used in connection with the publishing.
- (2) A person to whom a notice under this section is given must, within 3 business days after receiving the notice, comply with the notice.

Penalty: 20 penalty units.

Part 3 Approval of advertisements

Division 1 Approval of general advertisements

Section 30

- (3) An offence against subsection (2) is a strict liability offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that he or she did not intend to:
- (a) publish the publication, film or computer game in the Australian Capital Territory; or
 - (b) cause, authorise, permit or licence the publication, film or computer game to be published in the Australian Capital Territory.

Division 2—Advertising for unclassified films

31 Definitions

In this Division:

eligible film means an unclassified film that complies with conditions determined by the Minister by notice in the *Gazette*.

excluded film means a film that is exempt from classification, or from enforcement provisions relating to the public exhibition or sale or hire of films, under a law of a State or Territory.

film means a film as defined in section 5 that is intended for public exhibition that is not an excluded film.

32 Certificates of exemption

- (1) A person who is, or proposes to be, the distributor or exhibitor of an eligible film may apply to the Board for a certificate of exemption in relation to the film for advertising purposes.
- (2) An application for a certificate of exemption must be:
 - (a) in writing; and
 - (b) made in a form approved by the Director in writing; and
 - (c) signed by or on behalf of the applicant; and
 - (d) accompanied by the prescribed fee for that category of film.

33 Granting of certificates of exemption

- (1) Subject to this section, the Board may grant a certificate of exemption in relation to an eligible film.
- (2) The Board must not grant a certificate of exemption in relation to a film if the Board is of the opinion that, if the film were classified, it would be classified RC, X 18+ or R 18+.
- (3) The Board must not, without the written approval of the Minister, grant more than 30 certificates of exemption in a calendar year.

Section 34

34 Board may refuse certificate

The Board may refuse to grant a certificate of exemption in relation to a film if the Board is of the opinion that the applicant has not given to the Board a copy of all advertising matter relating to the film.

35 Conditions of exemptions

The Minister may, by notice in the *Gazette*, determine conditions that are to apply to the use of advertising matter in relation to films in respect of which certificates of exemption have been granted.

36 Revocation of exemptions

The Director may, by notice in writing given to a person to whom a certificate of exemption has been granted, revoke the certificate if the Board is satisfied that there has been a breach of a condition applicable to the exemption.

37 Review of decision not to grant exemption

If:

- (a) the Board refuses to grant a certificate of exemption in respect of an eligible film; and
- (b) the refusal was not because of subsection 33(3);

the applicant may apply to the Review Board for a review of the decision.

Part 4—Reclassification

38 Limit on reclassification

- (1) If:
 - (a) a publication, a film or a computer game is classified; or
 - (b) an advertisement is approved or refused approval;the Board must not reclassify the publication, film or computer game, or approve or refuse to approve the advertisement, within the period of 2 years commencing on the day on which the classification, approval or refusal of approval was done.
- (2) Subsection (1) does not prevent the Board classifying a film or computer game that becomes unclassified under section 21 or whose classification is revoked under section 21A.

39 Reclassification etc. after 2 years

- (1) After that period of 2 years, the Board may:
 - (a) reclassify the publication, film or computer game; or
 - (b) reconsider the advertisement and approve or refuse to approve it.
- (2) The Board may act under subsection (1) at the request of the Minister or on its own initiative.
- (3) If the Minister requests the Board to act under subsection (1), the Board must do so.
- (4) If a participating Minister asks the Minister, in writing, to make a request under this section, the Minister must do so.
- (5) If the publisher of the publication, film or computer game resides in the Australian Capital Territory or has an office in the Australian Capital Territory, the 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.

Section 40

- (6) A person to whom a notice under this section is given must, within 5 business days after receiving the notice, comply with the notice.

Penalty: 20 penalty units.

- (7) An offence against subsection (6) is a strict liability offence.
- (8) It is a defence to a prosecution for an offence against subsection (6) if the defendant proves that he or she did not have a copy of the publication, film or computer game.

40 Notice of intention to reclassify etc.

- (1) If the Board intends to reclassify a publication, a film or a computer game or reconsider a decision on an advertisement, the Director must give notice of that intention, inviting submissions about the matter.
- (2) The Director must cause the contents of the notice to be publicised in such manner as the Director decides at least 30 days before the Board proposes to consider the matter.
- (3) If practicable, the Director must give a copy of the notice to the person on whose application the former classification or approval was made or given at least 30 days before the Board proposes to consider the matter.
- (4) The notice must specify the day on which the Board proposes to consider the matter.

41 Consideration of submissions

The matters that the Board is to take into account in reclassifying the publication, film or computer game or in approving or refusing to approve the advertisement include issues raised in submissions made to the Board about the matter.

Part 5—Review of decisions

42 The persons who may apply for review

- (1) Any of the following persons may apply to the Review Board for a review of a decision:
 - (a) the Minister;
 - (b) the applicant for classification of the publication, film or computer game concerned or the applicant for approval of the advertisement concerned;
 - (c) the publisher of the film, publication or computer game concerned;
 - (d) a person aggrieved by the decision.
- (2) If a participating Minister asks the Minister, in writing, to apply for a review of a decision, the Minister must do so.
- (3) Without limiting paragraph (1)(d), if the decision referred to in that paragraph is a restricted decision, the following persons or bodies are taken to be persons aggrieved by the decision:
 - (a) a person who has engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the publication, film or computer game concerned;
 - (b) an organisation or association, whether incorporated or not, whose objects or purposes include, and whose activities relate to, the contentious aspects of that theme or subject matter.
- (4) However, a person or body is not aggrieved by a restricted decision because of subsection (3) if the decision was made before:
 - (a) the person engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the publication, film or computer game concerned;
or
 - (b) the organisation or association was formed, or its objects or purposes included and its activities related to, the contentious aspects of that theme or subject matter.

Section 42A

(5) In this section:

restricted decision means a decision of the Board:

- (a) to classify a publication Category 1 restricted, Category 2 restricted or RC; or
- (b) to classify a film MA 15+, R 18+, X 18+ or RC; or
- (c) to classify a computer game MA 15+ or RC.

42A Review Board may refuse to deal with certain applications

The Review Board may refuse to deal with an application for review made by a person referred to in paragraph 42(1)(d), or to deal further with it, if the Review Board is satisfied that the application is frivolous or vexatious or not made in good faith.

43 Applications for review

- (1) An application for review of a decision must be:
 - (a) in writing; and
 - (b) made in a form approved by the Convenor in writing; and
 - (c) signed by or on behalf of the applicant; and
 - (d) except for an application made by the Minister—
accompanied by the prescribed fee.
- (2) An application by the Minister for review of a decision may be made at any time.
- (3) Any other application for review of a decision must be made:
 - (a) within 30 days after the applicant received notice of the decision; or
 - (b) within such longer period as the Review Board allows.
- (4) If a person other than the original applicant applies for review of a decision, the Convenor must notify the original applicant in writing of the application and of the day on which it will be considered.

44 Dealing with applications

- (1) The Review Board must deal with an application for review of a decision in the same way that the Board deals with an application for classification of a publication, film or computer game or for approval of an advertisement.

- (2) Section 19 (other than subsection 19(6)) applies for the purpose of an application for review as if:
- (a) references in that section to the Board were references to the Review Board; and
 - (b) references in that section to the Director were references to the Convenor.

44A Obtaining copies for review

- (1) If:
- (a) an application is made for a review of a classification decision by a person who is not the original applicant for classification of the publication, film or computer game concerned; and
 - (b) the Board or the Review Board does not have a copy of the publication, film or game and a copy is not available to it; and
 - (c) the original applicant or the publisher of the publication, film or game, resides in the Australian Capital Territory or has an office in the Australian Capital Territory;
- the 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 game available for the purpose of the review.
- (2) A person to whom a notice under this section is given must, within 5 business days after receiving the notice, comply with the notice.
- Penalty: 20 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that he or she did not have a copy of the publication, film or game.

44B Validation of Review Board decisions etc. in relation to decisions on applications by law enforcement agencies

- (1) A decision (the *review decision*) made by the Review Board (whether before or after the commencement of this section) on an application (the *review application*):

Section 44B

- (a) for review of a decision on an application made by or on behalf of a law enforcement agency of the Commonwealth, a State or a Territory; and
 - (b) that did not satisfy the requirements of this Act for the making of the review application;
- is as valid, and is taken always to have been as valid, as it would have been if the review application had satisfied those requirements.
- (2) Any later decision made, or any later action taken by, the Board, the Review Board, the Director or the Convenor under this Act (whether before or after the commencement of this section) on the basis of the review decision is as valid, and is taken always to have been as valid, as it would have been if the review decision had been made on an application that satisfied the requirements of this Act for the making of the application.

Part 6—The Classification Board

Division 1—Establishment of the Board

45 Establishment of Classification Board

A Classification Board is established.

46 Constitution of Board

The Board is to consist of:

- (a) a Director; and
- (b) a Deputy Director; and
- (c) Senior Classifiers; and
- (d) other members.

47 Maximum number of members

There must not be more than 20 members or such higher number as is prescribed by the regulations.

48 Appointment of members

- (1) The members (other than temporary members) are to be appointed by the Governor-General.
- (2) In appointing members, regard is to be had to the desirability of ensuring that the membership of the Board is broadly representative of the Australian community.
- (3) The Minister must, before recommending the appointment of a member (other than a temporary member), consult with participating Ministers.

49 Full-time and part-time appointments

- (1) The Director, the Deputy Director and the Senior Classifiers are to be appointed as full-time members.

Section 50

- (2) Any other member may be appointed either as a full-time member or as a part-time member.

50 Temporary members

- (1) The Minister may appoint a person to be a temporary member of the Board if, in his or her opinion, it is necessary to do so for the efficient dispatch of the Board's business.
- (2) An appointment under this section is to be for a maximum period of 3 months.

51 Terms and conditions of appointment

- (1) A member (other than a temporary member) is to be appointed for the period (not longer than 5 years) specified in the instrument of appointment but is eligible for reappointment.
- (2) A member holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the Governor-General.
- (3) A member must not hold office as a member for a total of more than 7 years.

Division 2—Responsibilities and powers of the Director

52 Responsibilities and powers of the Director

The Director is responsible for ensuring that the business of the Board is conducted in an orderly and efficient way and, for that purpose, the Director may give directions as to the arrangement of the business of the Board.

53 Powers of Director under State/Territory laws

The Director may exercise powers conferred on him or her by:

- (a) a provision of a law of a State or the Northern Territory that corresponds to section 23, 23A, 24, 30 or 44A; or
- (b) a provision of a law of a State or Territory that:
 - (i) relates to the granting of exemptions from a State or Territory law relating to publications, films or computer games or approval of organisations in relation to films or computer games; or
 - (ii) relates to the approval of forms; or
 - (iii) is prescribed.

Division 4—Procedure of the Board

56 Board to regulate its procedure

Subject to this Division, the procedure to be followed by the Board is as determined by the Director.

57 Decisions of the Board

- (1) This section applies to the consideration by the Board of an application or of an advertisement.
- (2) The Director may give directions as to the constitution of the Board for the purpose of that consideration.
- (3) If the members of the Board dealing with a matter are divided in opinion, but not equally divided, the decision of the majority prevails.
- (4) If the members of the Board are equally divided in opinion:
 - (a) if the Board constituted for the purposes of the matter includes the Director—the Director has a casting vote as well as a deliberative vote; and
 - (b) in any other case—the Director must vary the constitution of the Board by adding 1 or more other members and the matter is to be considered again.
- (5) The Director may decide the way in which decisions of the Board, and opinions of individual members, are to be recorded.

58 Procedures that apply to meetings of the Board

- (1) The Director is to convene such meetings of the Board as he or she thinks necessary for the efficient performance of its functions.
- (2) Meetings are to be held at such places as the Director decides.
- (3) The Director is to preside at all meetings at which he or she is present.
- (4) If the Director is not present at a meeting:
 - (a) the Deputy Director is to preside; or

- (b) if the Deputy Director is not present—the members present are to appoint a member to preside.
- (5) At a meeting, 5 members constitute a quorum.
- (6) Questions arising at a meeting are to be determined by a majority of the votes of the members present and voting.
- (7) If a matter relating to the classification of a publication, film or computer game or the approval of an advertisement is referred to a meeting of the Board, only those members who have read the publication, seen the film or advertisement or seen the computer game demonstrated may vote on the matter.
- (8) The person presiding at a meeting has a deliberative vote and, if necessary, also has a casting vote.

Division 5—Administrative provisions

59 Delegations

- (1) The Director may by signed instrument delegate to another member all or any of the Director's powers under this Act or the regulations.
- (2) Subject to subsection (3), the Director may, by signed instrument, delegate to a member of staff mentioned in section 88A:
 - (a) all or any of the Board's powers under this Act in relation to:
 - (i) the classification of publications, films or computer games; or
 - (ii) the approval of advertisements for publications, films or computer games; and
 - (b) all or any of the Director's powers under the regulations.
- (3) A power may only be delegated under paragraph (2)(a) if the Board has, by resolution, determined that the delegation is desirable for the efficient running of the Board.

60 Remuneration and allowances

- (1) A member is to be paid the remuneration and allowances determined by the Remuneration Tribunal. If there is no determination in force, the member is to be paid such remuneration as is prescribed.
- (2) A member is to be paid such other allowances as are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

61 Leave of absence

- (1) A member has the recreation leave entitlements determined by the Remuneration Tribunal.
- (2) The Minister may grant a member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

62 Outside employment

- (1) Except with the consent of the Minister, a full-time member must not engage in paid employment outside the duties of his or her office.
- (2) Subsection (1) does not apply to service in the Defence Force.

63 Resignation

- (1) A member (other than a temporary member) may resign by giving a signed notice of resignation to the Governor-General.
- (2) A temporary member may resign by giving a signed notice of resignation to the Minister.

64 Disclosure of interests

- (1) A member who has a conflict of interest in relation to a matter being considered or about to be considered by the Board must disclose the matters giving rise to that conflict to the Board as soon as possible after becoming aware of the conflict.
- (2) The member must not take part in the making of a decision by the Board in relation to the matter unless the Director agrees or, if the member is the Director, the Minister agrees.
- (3) For the purposes of this section, a member has a conflict of interest in relation to a matter being considered or about to be considered by the Board if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that matter.

65 Termination of appointment

- (1) The Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of a member if:
 - (a) the member:
 - (i) becomes bankrupt; or

Section 65

- (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the member is a full-time member and is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the member is a part-time member and is absent, without reasonable excuse, from 3 consecutive meetings of the Board; or
 - (d) the member engages in paid employment contrary to section 62; or
 - (e) the member fails, without reasonable excuse, to comply with section 64.
- (3) If a member is:
- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;
- the Governor-General may, with the member's consent, retire the member from office on the ground of incapacity.
- (4) In spite of anything in this Act, a member who:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her retiring age within the meaning of that Act;
- cannot be retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.
- (5) In spite of anything in this Act, a member who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60;
- cannot be retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation

Board of Trustees No. 1 has given a certificate under section 13 of that Act.

- (6) This section applies to a temporary member as if references to the Governor-General were references to the Minister.

66 Acting appointments

- (1) If:
- (a) there is a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
 - (b) the Director is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;
- the Deputy Director is to act as the Director during the vacancy, absence or inability.
- (2) If the Deputy Director is not available, the Minister may appoint another member to act as the Director during the vacancy, absence or inability.
- (3) The Minister may appoint a person to act in the office of a member other than the Director:
- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
 - (b) during a period, or during all periods, when the holder of the office is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (4) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

67 Annual report

- (1) As soon as practicable after the end of each financial year, the Director must give to the Minister a report of the management of the administrative affairs of the Board during the financial year.

Section 67

- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

Part 7—The Review Board

Division 1—Establishment of the Review Board

72 Establishment of Classification Review Board

A Classification Review Board is established.

73 Constitution of Review Board

The Review Board is to consist of:

- (a) a Convenor; and
- (b) a Deputy Convenor; and
- (c) at least 3, but not more than 8 (or such higher number as is prescribed) other members.

74 Appointment of members of the Review Board

- (1) The members of the Review Board are to be appointed by the Governor-General.
- (2) In appointing members of the Review Board, regard is to be had to the desirability of ensuring that the membership of the Review Board is broadly representative of the Australian community.
- (3) The Minister must, before recommending the appointment of a member of the Review Board, consult with participating Ministers.

75 Members of the Review Board to be part-time

The members of the Review Board are to be appointed as part-time members.

76 Terms and conditions of appointment

- (1) A member of the Review Board is to be appointed for the period (not longer than 5 years) specified in the instrument of appointment but is eligible for reappointment.

Part 7 The Review Board

Division 1 Establishment of the Review Board

Section 76

- (2) A member of the Review Board holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the Governor-General.
- (3) A member of the Review Board must not hold office as a member of the Review Board for a total of more than 7 years.

Division 2—Responsibilities and powers of the Convenor

77 Responsibilities and powers of the Convenor

The Convenor is responsible for ensuring that the business of the Review Board is conducted in an orderly and efficient way and, subject to section 78, the Convenor may give directions as to the arrangement of the business of the Review Board or the constitution of the Review Board for the purpose of considering a particular matter.

Division 3—Procedure of the Review Board

78 Constitution of Review Board for the purpose of its functions

For the purpose of performing its functions, the Review Board is to be constituted by at least 3 of its members who are to be nominated for the purpose by the Convenor.

79 Decisions of the Review Board

- (1) If the members of the Review Board dealing with a matter are divided in opinion, but not equally divided, the decision of the majority prevails.
- (2) If the members of the Review Board are equally divided in opinion:
 - (a) if the Review Board constituted for the purposes of the application or matter includes the Convenor—the Convenor has a casting vote as well as a deliberative vote; and
 - (b) in any other case—the Convenor is to vary the constitution of the Review Board by adding 1 or more other members and the matter is to be considered again.
- (3) The Convenor may decide the way in which decisions of the Review Board, and opinions of individual members, are to be recorded.

Division 4—Administrative provisions

79A Delegations

- (1) The Convenor may, by signed instrument, delegate to another member of the Review Board all or any of the Convenor's powers under this Act or the regulations.
- (2) Subject to subsection (3), the Convenor may, by signed instrument, delegate to a member of staff mentioned in section 88A:
 - (a) all or any of the Review Board's powers under this Act in relation to:
 - (i) the classification of publications, films or computer games; or
 - (ii) the approval of advertisements for publications, films or computer games; and
 - (b) all or any of the Convenor's powers under the regulations.
- (3) A power may only be delegated under paragraph (2)(a) if the Review Board has, by resolution, determined that the delegation is desirable for the efficient running of the Review Board.

80 Remuneration and allowances

- (1) A member of the Review Board is to be paid the remuneration and allowances determined by the Remuneration Tribunal. If there is no determination in force, the member is to be paid such remuneration as is prescribed.
- (2) A member of the Review Board is to be paid such other allowances as are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

81 Resignation

A member of the Review Board may resign by giving a signed notice of resignation to the Governor-General.

Section 82

82 Disclosure of interests

- (1) A member of the Review Board who has a conflict of interest in relation to a matter being considered or about to be considered by the Review Board must disclose the matters giving rise to that conflict to the Review Board as soon as possible after becoming aware of the conflict.
- (2) The member must not take part in the making of a decision by the Review Board in relation to the matter unless the Convenor agrees or, if the member is the Convenor, the Minister agrees.
- (3) For the purposes of this section, a member of the Review Board has a conflict of interest in relation to a matter being considered or about to be considered by the Review Board if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that matter.

83 Termination of appointment

- (1) The Governor-General may terminate the appointment of a member of the Review Board for misbehaviour or physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of a member of the Review Board if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the member is absent, without reasonable excuse, from 3 consecutive meetings of the Review Board; or
 - (c) the member fails, without reasonable excuse, to comply with section 82.
- (3) If a member of the Review Board is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or

- (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;
the Governor-General may, with the member's consent, retire the member from office on the ground of incapacity.
- (4) In spite of anything in this Act, a member of the Review Board who:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her retiring age within the meaning of that Act;
- cannot be retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.
- (5) In spite of anything in this Act, a member of the Review Board who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60;
- cannot be retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

84 Acting appointments

- (1) If:
- (a) there is a vacancy in the office of Convenor, whether or not an appointment has previously been made to the office; or
 - (b) the Convenor is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;
- the Deputy Convenor is to act as the Convenor during the vacancy, absence or inability.
- (2) If the Deputy Convenor is not available, the Minister may appoint another member of the Review Board to act as the Convenor during the vacancy, absence or inability.

Section 85

- (3) The Minister may appoint a person to act in the office of a member of the Review Board other than the Convenor:
 - (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the holder of the office is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (4) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

85 Annual report

- (1) As soon as practicable after the end of each financial year, the Convenor must give to the Minister a report of the management of the administrative affairs of the Review Board during the financial year.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

Part 8—Miscellaneous

87 Evidentiary certificates

- (1) A person may apply to the Director for a certificate about action taken, or not taken, under this Act.
- (2) If the application is not an enforcement application, the Director must give the certificate to the applicant after the applicant pays the prescribed fee.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

- (3) If the application is an enforcement application, the Director must give the certificate to the applicant after the applicant makes the application. The applicant must pay the prescribed fee on or after making the application.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

87A Board to make decisions within a specified time

- (1) The Board must make a decision on:
 - (a) an application for the classification of a publication, film or computer game (other than an enforcement application); or
 - (b) an application for approval of an advertisement;within 20 business days, or such shorter period as is prescribed by the regulations for the application. The time from which the period runs is to be worked out in the way prescribed by the regulations.
- (2) If the Board does not make the decision within the period, the Director must state the reason for the Board not doing so in the annual report given to the Minister under section 67.

87B Review Board to make decisions within a specified time

- (1) The Review Board must make a decision on an application for a review of a decision within 20 business days, or such other period as is prescribed by the regulations for the application. The time

Section 88

from which the period runs is to be worked out in the way prescribed by the regulations.

- (2) If the Review Board does not make the decision within the period, the Convenor must state the reason for the Review Board not doing so in the annual report given to the Minister under section 85.

88 Additional functions of Board

The Director may, with the written approval of the Minister, enter into an arrangement with a person (including an authority of the Commonwealth) for the performance of services by the Board in relation to material made available on a telecommunications service or other communications service.

88A Staff assisting the Board and the Review Board

The staff assisting the Board and the Review Board are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary of the Department.

89 Service of notices

A notice that may be given to a person under this Act is taken to have been given to the person if:

- (a) it is personally delivered to the person; or
- (b) it is sent by post addressed to the person's place of residence or business last known to the Director or Convenor; or
- (c) it is left at the person's place of residence or business last known to the Director or Convenor with a person who is apparently at least 16 and is apparently living or employed at that place.

90 Payments to the States and Territories

- (1) The Minister may enter into an agreement with a participating Minister under which amounts are to be paid to the participating Minister's State or Territory in respect of the administration by the State or Territory of the scheme referred to in section 3.
- (2) Payments referred to in subsection (1) are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

91 Waiver of fees*Waiver by Director*

- (1) The Director may, on application in writing by a person, waive all or part of the payment of fees payable, or notionally payable, in respect of an application under this Act to the Board or Director if:
- (a) in the Director's opinion it is in the public interest to do so for public health or educational reasons; or
 - (b) the body that would be liable, or notionally liable, for the fee is:
 - (i) the Commonwealth, a State or a Territory (or an authority of one of those bodies); or
 - (ii) a non-profit organisation; or
 - (c) the payment is for special interest material having a limited distribution that is:
 - (i) wholly or mainly a documentary record of an event; or
 - (ii) of a cultural or like nature; or
 - (iii) a short film from a new or emerging film maker;and, in the Director's opinion, it is in the public interest to do so.

Waiver by Convenor

- (1A) The Convenor may, on application in writing by a person, waive all or part of the payment of fees payable, or notionally payable, in respect of an application under this Act to the Review Board or Convenor if:
- (a) in the Convenor's opinion it is in the public interest to do so for public health or educational reasons; or
 - (b) the body that would be liable, or notionally liable, for the fee is:
 - (i) the Commonwealth, a State or a Territory (or an authority of one of those bodies); or
 - (ii) a non-profit organisation; or
 - (c) the payment is for special interest material having a limited distribution that is:
 - (i) wholly or mainly a documentary record of an event; or
 - (ii) of a cultural or like nature; or
 - (iii) a short film from a new or emerging film maker;

Section 91A

and, in the Convenor's opinion, it is in the public interest to do so.

Fee waiver in accordance with principles

- (1B) The payment of fees may only be waived:
- (a) by the Director under subsection (1); or
 - (b) the Convenor under subsection (1A);
- in accordance with the written principles determined by the Minister, in consultation with the participating Ministers.

Notice of decision

- (2) If the Director or Convenor makes a decision under this section, the Director or Convenor, as the case may be, must, within 28 days after making the decision, notify the applicant in writing of the decision and of the reasons for the decision.
- (3) The notice must include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision.
- (4) A failure to comply with subsection (3) does not invalidate the decision.

Review by AAT

- (5) An application may be made to the Administrative Appeals Tribunal for review of a decision of:
 - (a) the Director under subsection (1); or
 - (b) the Convenor under subsection (1A).

91A Commonwealth not liable to pay a fee

- (1) The Commonwealth is not liable to pay a fee that is payable under this Act. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay such a fee.
- (2) The Minister for Finance and Administration may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (1) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth.

- (3) Directions under subsection (2) have effect, and must be complied with, despite any other Commonwealth law.
- (4) In subsections (1) and (2), *Commonwealth* includes:
 - (a) an Agency (within the meaning of the *Financial Management and Accountability Act 1997*); and
 - (b) a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*);that cannot be made liable to taxation by a Commonwealth law.

Note: For persons that can be made liable to pay tax, but are exempt from the liability because of another Commonwealth law: see section 91B.

91B Cancellation of exemptions from fees

- (1) This section cancels the effect of a provision of another Act that would have the effect of exempting a person from liability to pay a fee payable under this Act.
- (2) The cancellation does not apply if the provision of the other Act:
 - (a) commences after this section commences; and
 - (b) refers specifically to a fee payable under this Act.

91C Debts due to the Commonwealth

A fee payable under this Act is recoverable as a debt due to the Commonwealth.

92 Act not to apply to broadcasting services under Broadcasting Services Act

This Act does not apply to broadcasting services to which the *Broadcasting Services Act 1992* applies.

92A Proceedings arising out of administration of Board or Review Board

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Board or the Review Board, including any proceeding relating to anything done by the Director or the Convenor, may be instituted by or against the Commonwealth.

93 Regulations

General regulation-making power

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations in relation to assessments of additional content

- (2) Without limiting subsection (1), the regulations may prescribe:
 - (a) for the purposes of subparagraphs 21AA(a)(ii) and 22E(2)(a)(ii)—circumstances in which an assessment of classifiable elements is taken to be misleading, incorrect or grossly inadequate; and
 - (b) for the purposes of paragraphs 22E(2)(c), 22F(1)(b) and 22H(1)(b)—circumstances in which an assessment of additional content is taken to contain misleading, incorrect or grossly inadequate information.
- (3) To avoid doubt, the regulations are not to be taken to limit the circumstances in which:
 - (a) an assessment is misleading, incorrect or grossly inadequate; or
 - (b) an assessment contains misleading, incorrect or grossly inadequate information.

Part 9—Transitional provisions and repeals

94 Definitions

In this Part:

censor means:

- (a) the Chief Censor, the Deputy Chief Censor or another member of the former Board; or
- (b) a Deputy Censor appointed under the Customs (Cinematograph Films) Regulations; or
- (c) a classification officer appointed under the Indecent Articles and Classified Publications Act 1975 of New South Wales, the *Classification of Publications Ordinance 1983* of the Australian Capital Territory or the *Classification of Publications and Films Act* of the Northern Territory.

former Board means the Censorship Board constituted under the Customs (Cinematograph Films) Regulations.

former Review Board means the Film and Literature Board of Review constituted under the Customs (Cinematograph Films) Regulations.

95 Service of member of former Board or former Review Board

For the purposes of this Act, service by a person as a member of the former Board or of the former Review Board is taken to be service as a member of the Board or the Review Board.

96 Decisions of former Board and former Review Board

- (1) A classification, approval or determination made by the former Board or by a censor has effect as if it had been made by the Board under this Act.
- (2) A classification, approval or determination made by the former Review Board has effect as if it had been made by the Review Board under this Act.

Section 97

97 Pending applications

If an application for:

- (a) classification of a film, a publication or a computer game; or
- (b) approval of an advertisement; or
- (c) a certificate of exemption for advertising purposes in relation to an unclassified film; or
- (d) review of a decision;

is, on the day fixed under subsection 2(2) or the day applicable under subsection 2(3), pending under a law of a State or Territory, the application may be dealt with as if it had been made under this Act.

97A Reclassification

- (1) The Board may, on its own initiative, reclassify a publication or film where the publication or film was classified, in response to an enforcement application, by the former Board or a censor under the law of one State or Territory only.
- (2) The Board may also, on its own initiative, reclassify a publication or film where the publication or film was classified, in response to an enforcement application, by the former Board or a censor and was given different classifications in different States or Territories.

98 Repeals

- (1) The Customs (Cinematograph Films) Regulations of the Commonwealth are repealed.
- (2) The *Classification of Publications Ordinance 1983* of the Australian Capital Territory is repealed.

Part 10—Material prohibited in prescribed areas

Division 1—Preliminary

99 Definitions

In this Part:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

body corporate manager, in relation to a body corporate, means:

- (a) the manager or governing officer (however described) of the body corporate; or
- (b) a member of the governing body (however described) of the body corporate.

item, in relation to prohibited material, means a publication, film or computer game.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

level 1 prohibited material means:

- (a) a publication classified Category 1 restricted or Category 2 restricted; or
- (b) an unclassified publication that contains material that would be likely to cause it to be classified Category 1 restricted or Category 2 restricted; or
- (c) a film classified X 18+; or
- (d) an unclassified film that contains material that would be likely to cause it to be classified X 18+; or
- (e) a prohibited advertisement.

level 2 prohibited material means:

- (a) a publication, film or computer game classified RC; or
- (b) an unclassified publication, film or computer game that contains material that would be likely to cause it to be classified RC.

Section 100

material includes any computer data or other form of recording from which sounds or written or pictorial matter may be produced.

police officer means a constable within the meaning of the *Crimes Act 1914*.

postal service means a postal service within the meaning of paragraph 51(v) of the Constitution.

prescribed area has the same meaning as in the *Northern Territory National Emergency Response Act 2007*.

prohibited advertisement means an advertisement for a publication, a film or a computer game:

- (a) that has been refused approval under Part 3; or
- (b) that contains material that would be likely to cause it to be refused approval under Part 3.

prohibited material means:

- (a) level 1 prohibited material; or
- (b) level 2 prohibited material.

seized material means material seized under section 106.

State/Territory body corporate manager, in relation to a body corporate that operates within a State or Territory, means a person who takes part in managing, administering or governing the business of the body corporate in the State or Territory.

supply includes supply by way of sale, exchange, gift, lease, loan, hire or hire-purchase.

100 Concurrent operation of State and Territory laws

- (1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
- (2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:
 - (a) an act or omission that is an offence against a provision of this Part; or
 - (b) a similar act or omission;
an offence against the law of the State or Territory.

- (3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:
- (a) provides for a penalty for the offence that differs from the penalty provided for in this Part;
 - (b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;
 - (c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.

Division 2—Offences

101 Possession or control of level 1 prohibited material in prescribed areas

A person commits an offence if:

- (a) the person has possession or control of material; and
- (b) the material is level 1 prohibited material; and
- (c) the material is in a prescribed area.

Penalty: 50 penalty units.

102 Possession or control of level 2 prohibited material in prescribed areas

A person commits an offence if:

- (a) the person has possession or control of material; and
- (b) the material is level 2 prohibited material; and
- (c) the material is in a prescribed area.

Penalty: 100 penalty units.

103 Supplying prohibited material in and to prescribed areas

Supply generally

(1) A person commits an offence if:

- (a) the person:
 - (i) supplies material to a third person; or
 - (ii) prepares material intending to supply any of it, or believing that another person intends to supply any of it, to a third person; or
 - (iii) transports material intending to supply any of it, or believing that another person intends to supply any of it, to a third person; or
 - (iv) guards or conceals material intending to supply any of it, or intending to assist another person to supply any of it, to a third person; or

- (v) possesses material intending to supply any of it to a third person; and
- (b) the third person is in a prescribed area; and
- (c) the material is prohibited material.

Penalty: 100 penalty units.

Supplying 5 or more items

- (2) A person commits an offence if:
- (a) the person:
 - (i) supplies material to a third person; or
 - (ii) prepares material intending to supply any of it, or believing that another person intends to supply any of it, to a third person; or
 - (iii) transports material intending to supply any of it, or believing that another person intends to supply any of it, to a third person; or
 - (iv) guards or conceals material intending to supply any of it, or intending to assist another person to supply any of it, to a third person; or
 - (v) possesses material intending to supply any of it to a third person; and
 - (b) the third person is in a prescribed area; and
 - (c) the material is prohibited material; and
 - (d) the material consists of 5 or more items of prohibited material.

Penalty: 200 penalty units or imprisonment for 2 years, or both.

- (3) For the purposes of proving an offence against subsection (2), a person who engages in conduct specified in subparagraph (2)(a)(ii), (iii), (iv) or (v) in a prescribed area, is taken to have done so:
- (a) intending to supply the material; or
 - (b) believing that another person intends to supply the material;
or
 - (c) intending to assist another person to supply the material; as the subparagraph requires, to a person in a prescribed area.

Section 104

- (4) Subsection (3) does not apply in relation to a subparagraph mentioned in that subsection if the person proves that he or she did not have the intention or belief required by that subparagraph.

Note: A defendant bears a legal burden in relation to the matters in subsection (4)—see section 13.4 of the *Criminal Code*.

104 Body corporate managers taken to have committed offences

- (1) An offence against this Part that is committed by a body corporate is also taken to have been committed by:
- (a) each body corporate manager; and
 - (b) any State/Territory body corporate manager for the State or Territory in which the offence is committed.
- (2) A body corporate manager or State/Territory body corporate manager does not commit an offence because of subsection (1) if he or she:
- (a) does not know of the circumstances that constitute the offence; or
 - (b) knows of those circumstances but takes all reasonable steps to prevent the commission of the offence as soon as possible after he or she becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

105 Division does not apply to postal services

This Division does not apply in relation to anything done in the normal course of the provision of a postal service.

Division 3—Seizure and forfeiture of prohibited material

106 Seizure of prohibited material

If:

- (a) a police officer finds material in a prescribed area; and
- (b) the officer suspects on reasonable grounds that the material is prohibited material;

the officer may seize the material.

Note: See Part IAA of the *Crimes Act 1914* for police search powers.

107 Seizure notices

- (1) The police officer who is responsible for the seized material (the **responsible officer**) must, within 7 days after the day on which the material was seized, serve a seizure notice on:
 - (a) the owner of the material; or
 - (b) if the owner of the material cannot be identified after reasonable inquiries—the person from whom the material was seized.
- (2) Subsection (1) does not apply if:
 - (a) both:
 - (i) the owner of the material cannot be identified after reasonable inquiries; and
 - (ii) the material was not seized from a person; or
 - (b) it is not possible to serve the person required to be served under subsection (1).
- (3) The seizure notice must:
 - (a) identify the material; and
 - (b) state the date on which the material was seized; and
 - (c) state the ground or grounds on which the material was seized; and
 - (d) explain the procedures for the possible return of the material set out in sections 108 and 109; and
 - (e) provide contact details for the responsible officer; and

Section 108

- (f) state that, if the material is not returned to the owner under section 108 or 109, it is forfeited to the Commonwealth.

108 Return of seized material—on request

- (1) The owner of the seized material may request the responsible officer to return the material.
- (2) The request must be made:
 - (a) within 60 days after the date of the seizure notice; or
 - (b) if subsection 107(2) applied so that a seizure notice was not served—within 60 days after the day on which the material was seized.
- (3) If:
 - (a) the owner requests the return of the material within the time specified under subsection (2); and
 - (b) the responsible officer is satisfied, on reasonable grounds, that the material is not prohibited material;the responsible officer must return the material to the owner. Otherwise the request must be refused.

109 Return of seized material—application to magistrate

- (1) If the responsible officer refuses to return the material, the owner may apply to a magistrate for an order that the material is to be returned.
- (2) The application must be made within 60 days after the responsible officer's refusal.
- (3) If the magistrate is satisfied that the material is not prohibited material, the magistrate must order that the material is to be returned. Otherwise the magistrate must refuse to make the order.

110 Seized material forfeited to the Commonwealth

Seized material that is not returned to its owner under section 108 or 109:

- (a) is forfeited to the Commonwealth; and
- (b) must be destroyed, disposed of or otherwise dealt with as the Minister directs.

111 Relationship of Division to other laws

The powers conferred, and duties imposed, by this Division on police officers are in addition to, and not in derogation of, any other powers conferred, or duties imposed, by any other law of the Commonwealth or the law of a State or Territory.

Division 4—Miscellaneous

112 Evidence

In proceedings for an offence against this Part, a certificate under section 87 is prima facie evidence of the matters stated in the certificate.

113 Compensation for acquisition of property

- (1) Subsection 50(2) of the *Northern Territory (Self-Government) Act 1978* does not apply in relation to any acquisition of property referred to in that subsection that occurs as a result of the operation of this Part.
- (2) However, if the operation of this Part would result in an acquisition of property to which paragraph 51(xxxi) of the Constitution applies from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

114 Minister may repeal provisions of this Part

- (1) The Minister may, by legislative instrument, repeal some or all of the provisions of this Part.
- (2) A provision is repealed under subsection (1) when the instrument repealing the provision is made.
- (3) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply to an instrument made under subsection (1).
- (4) Neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to an instrument made under subsection (1).

115 Sunset provision [see Note 1]

This Part ceases to have effect at the end of the period of 5 years beginning on the day after the day on which the *Northern Territory National Emergency Response Act 2007* receives the Royal Assent.

Table of Acts

Notes to the *Classification (Publications, Films and Computer Games) Act 1995*

Note 1

The *Classification (Publications, Films and Computer Games) Act 1995* as shown in this compilation comprises Act No. 7, 1995 amended as indicated in the Tables below.

For cessation details of Part 10 *see* section 115.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Classification (Publications, Films and Computer Games) Act 1995</i>	7, 1995	15 Mar 1995	Ss. 1 and 2: Royal Assent Remainder: 1 Jan 1996 (<i>see Gazette</i> 1995, No. GN50)	
<i>Law and Justice Legislation Amendment Act 1997</i>	34, 1997	17 Apr 1997	Schedule 2: Royal Assent (a)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 293–296): 5 Dec 1999 (<i>see Gazette</i> 1999, No. S584) (b)	—
<i>Classification (Publications, Films and Computer Games) Amendment Act (No. 1) 2000</i>	111, 2000	4 Sept 2000	4 Sept 2000	—
<i>Classification (Publications, Films and Computer Games) Amendment Act (No. 1) 2001</i>	13, 2001	22 Mar 2001	22 Mar 2002	Sch. 1 (item 57)
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 6: (c)	S. 4(1), (2)

Notes to the *Classification (Publications, Films and Computer Games) Act 1995*

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Classification (Publications, Films and Computer Games) Amendment Act 2004</i>	61, 2004	26 May 2004	Schedules 1 and 2: 26 May 2005 Remainder: Royal Assent	Sch. 1 (items 16–21)
<i>Classification (Publications, Films and Computer Games) Amendment Act (No. 2) 2004</i>	140, 2004	14 Dec 2004	14 Dec 2004	—
<i>Classification (Publications, Films and Computer Games) Amendment Act 2007</i>	27, 2007	15 Mar 2007	Schedule 1 and Schedule 2 (items 1, 3–6, 10–13, 15, 19, 20, 26): 1 July 2007 (see F2007L01781) Schedule 2 (items 7, 9, 14, 17, 18), Schedule 3 (items 7, 8) and Schedule 4 (items 10–14): [see Note 2 and Table A] Schedule 2 (items 16, 21–25) and Schedule 3 (items 1–6, 9–12): 15 Sept 2007 Remainder: Royal Assent	Sch. 1 (items 18–21), Sch. 2 (items 27–29), Sch. 3 (item 13) and Sch. 4 (items 2, 4, 13)
<i>Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007</i>	128, 2007	17 Aug 2007	Ss. 3–5: Royal Assent Schedule 1: 14 Sept 2007	Ss. 3–5
<i>Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Act 2007</i>	179, 2007	28 Sept 2007	29 Sept 2007	Sch. 1 (item 4)

Act Notes

- (a) The *Classification (Publications, Films and Computer Games) Act 1995* was amended by Schedule 2 only of the *Law and Justice Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (b) The *Classification (Publications, Films and Computer Games) Act 1995* was amended by Schedule 1 (items 293–296) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (c) The *Classification (Publications, Films and Computer Games) Act 1995* was amended by Schedule 6 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
 - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 4.....	am. No. 27, 2007
S. 5	am. No. 34, 1997; No. 111, 2000; No. 13, 2001; No. 61, 2004; Nos. 27 and 179, 2007
S. 5A	ad. No. 13, 2001
S. 5B	ad. No. 13, 2001 am. No. 61, 2004
S. 6A	ad. No. 24, 2001
Part 2	
Division 1	
S. 7	am. No. 61, 2004
S. 8	am. No. 13, 2001
Division 2	
S. 9.....	am. No. 179, 2007
S. 9A	ad. No. 179, 2007
S. 10	am. No. 13, 2001
S. 13.....	am. No. 111, 2000; No. 13, 2001
Note to s. 13.....	ad. No. 111, 2000
S. 13A	ad. No. 13, 2001
Subhead. to s. 14(1)	ad. No. 27, 2007
Subhead. to s. 14(4)	ad. No. 27, 2007
S. 14	am. No. 34, 1997; No. 111, 2000; No. 13, 2001; No. 27, 2007
Note to s. 14(1)	ad. No. 111, 2000
S. 15.....	am. No. 111, 2000; No. 13, 2001
Notes to s. 15(3), (4)	ad. No. 111, 2000
S. 16	rs. No. 13, 2001
S. 17.....	am. No. 111, 2000; No. 13, 2001; No. 61, 2004; No. 27, 2007
Note to s. 17(1)	ad. No. 111, 2000
Heading to s. 18	am. No. 13, 2001
Ss. 18, 19	am. No. 13, 2001
Heading to s. 20	am. No. 13, 2001
S. 20	am. No. 13, 2001; No. 61, 2004
Heading to s. 21	rs. No. 34, 1997
S. 21	am. No. 34, 1997; No. 13, 2001
S. 21A	ad. No. 34, 1997 rs. No. 13, 2001
S. 21AA.....	ad. No. 27, 2007
Heading to s. 22	am. No. 13, 2001
S. 22.....	am. No. 111, 2000; No. 13, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 22A	ad. No. 111, 2000 am. No. 13, 2001
Note to s. 22A	ad. No. 111, 2000
S. 22B	ad. No. 13, 2001
S. 22C	ad. No. 140, 2004 am. No. 27, 2007
Division 2A	
Div. 2A of Part 2	ad. No. 27, 2007
Subdivision A	
Ss. 22D–22G	ad. No. 27, 2007
Subdivision B	
S. 22H	ad. No. 27, 2007
S. 22J	ad. No. 27, 2007
Division 3	
Note to s. 23(4)	ad. No. 24, 2001
Division 3A	
Div. 3A of Part 2	ad. No. 13, 2001
S. 23A	ad. No. 13, 2001
Division 4	
S. 24	am. No. 13, 2001
Note to s. 24(4)	ad. No. 24, 2001
Division 5	
S. 25	am. No. 27, 2007
Subhead. to s. 26(1)	ad. No. 27, 2007
Subheads. to s. 26(3)–(5)	ad. No. 27, 2007
S. 26	am. No. 27, 2007
S. 27	am. No. 111, 2000; No. 27, 2007
Notes to s. 27(2), (3)	ad. No. 111, 2000
Division 6	
Div. 6 of Part 2	ad. No. 13, 2001
S. 28A	ad. No. 13, 2001 am. No. 61, 2004
S. 28B	ad. No. 13, 2001
S. 28C	ad. No. 13, 2001 am. No. 61, 2004
Part 3	
Division 1	
S. 29	am. No. 34, 1997; No. 27, 2007
Note to s. 30(3)	ad. No. 24, 2001
Division 2	
S. 33	am. No. 61, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 4	
Ss. 38, 39.....	am. No. 13, 2001
Part 5	
S. 42.....	am. No. 13, 2001; No. 61, 2004
S. 42A.....	ad. No. 13, 2001
S. 44A.....	ad. No. 13, 2001
S. 44B.....	ad. No. 140, 2004 am. No. 27, 2007
Part 6	
Division 1	
S. 47.....	am. No. 27, 2007
Division 2	
S. 52.....	am. No. 27, 2007
S. 53.....	am. No. 13, 2001; No. 27, 2007
Div. 3 of Part 6.....	rep. No. 27, 2007
S. 54.....	am. No. 146, 1999 rep. No. 27, 2007
S. 55.....	rep. No. 27, 2007
Division 5	
S. 59.....	am. No. 146, 1999; No. 27, 2007
S. 61.....	am. No. 146, 1999
S. 67.....	rs. No. 27, 2007
Ss. 68, 69.....	rep. No. 27, 2007
S. 70.....	am. No. 24, 2001 rep. No. 27, 2007
S. 71.....	rep. No. 27, 2007
Part 7	
Division 1	
S. 73.....	am. No. 27, 2007
Division 4	
S. 79A.....	ad. No. 27, 2007
Part 8	
S. 86.....	am. No. 13, 2001 rep. No. 27, 2007
S. 87.....	rs. No. 111, 2000
Notes to s. 87(2), (3).....	ad. No. 111, 2000
S. 87A.....	ad. No. 111, 2000
S. 87B.....	ad. No. 27, 2007
S. 88A.....	ad. No. 27, 2007
S. 89.....	am. No. 27, 2007
Subhead. to s. 91(1).....	ad. No. 27, 2007
Subhead. to s. 91(2).....	ad. No. 27, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 91.....	am. No. 111, 2000; No. 13, 2001; No. 27, 2007
Ss. 91A–91C.....	ad. No. 111, 2000
S. 92A.....	ad. No. 27, 2007
Subhead. to s. 93(1).....	ad. No. 27, 2007
S. 93.....	am. No. 27, 2007
Part 9	
S. 94.....	am. No. 34, 1997; No. 111, 2000
Heading to s. 95.....	rs. No. 27, 2007
S. 95.....	am. No. 27, 2007
S. 97A.....	ad. No. 13, 2001
Part 10	
Part 10.....	ad. No. 128, 2007
Division 1	
Ss. 99, 100.....	ad. No. 128, 2007
Division 2	
Ss. 101–105.....	ad. No. 128, 2007
Division 3	
Ss. 106–111.....	ad. No. 128, 2007
Division 4	
Ss. 112–115.....	ad. No. 128, 2007
Schedule.....	rep. No. 61, 2004

Note 2

Note 2

Classification (Publications, Films and Computer Games) Amendment Act 2007
(No. 27, 2007)

The following amendments commence on 15 March 2008 unless proclaimed earlier:

Schedule 2

7 Subsection 44A(1)

Omit “Director”, substitute “Convenor”.

9 Paragraph 53(a)

Omit “, 30 or 44A”, substitute “or 30”.

14 At the end of Division 2 of Part 7

Add:

77A Powers of Convenor under State/Territory laws

The Convenor may exercise powers conferred on him or her by a provision of a law of a State or the Northern Territory that corresponds to section 44A.

17 At the end of subsection 87(1)

Add “by the Director or by the Board”.

Note: The following heading to subsection 87(1) is inserted “*Applications to the Director*”.

18 At the end of section 87

Add:

Applications to the Convenor

- (4) A person may apply to the Convenor for a certificate about action taken, or not taken, under this Act by the Convenor or by the Review Board.

Note 2

- (5) If the application is not an enforcement application, the Convenor must give the certificate to the applicant after the applicant pays the prescribed fee.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

- (6) If the application is an enforcement application, the Convenor must give the certificate to the applicant after the applicant makes the application. The applicant must pay the prescribed fee on or after making the application.

Note: For an applicant that is the Commonwealth, or a Commonwealth authority or agency: see section 91A.

Schedule 3

7 After section 14

Insert:

14A Films consisting only of classified films

Despite any other provision of this Act, a film:

- (a) that is contained on one device; and
- (b) that consists only of 2 or more classified films;

is to be treated, for the purposes of this Act, as if each of the classified films were on a separate device.

8 At the end of subsection 21(2)

Add:

- ; or (c) for a classified film—the addition or removal of navigation functions; or
- (d) for a classified film—the addition or removal of material which:
 - (i) provides a description or translation of the audio or visual content of the film; and
 - (ii) would not be likely to cause the film to be given a higher classification.

Example: A film which has been classified has captions added for the hearing impaired. This addition would not cause the film to become unclassified under subsection 21(1).

Schedule 4

10 Section 5 (definition of *determined markings*)

Omit “by the Director”.

11 Subsection 8(1)

Omit “Director may, by notice in the *Gazette*”, substitute “Minister may, by legislative instrument”.

12 After subsection 8(1)

Insert:

(1A) The Minister must consult with participating Ministers before making a determination.

14 At the end of Division 1 of Part 2

Add:

8A Notice about classifications

The Minister may, in writing, approve a form for a notice about classifications.

Note: Provisions that require sellers and exhibitors of classified material to display a notice about classifications where the material is sold or exhibited can be found in complementary laws of the States and Territories.

As at 5 October 2007 the amendments are not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Classification (Publications, Films and Computer Games) Amendment Act (No. 1) 2001 (No. 13, 2001)

Schedule 1

57 Application of amendments

The amendments made by this Schedule (except the amendments made by items 16, 42, 49, 51, 52, 53 and 56) do not apply to:

- (a) a publication, film or computer game first published before the commencement of this Act; or
- (b) a publication, film or computer game for which an application for classification had been made before that commencement.

Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001 (No. 24, 2001)

4 Application of amendments

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
 - (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.
-

Table A

Classification (Publications, Films and Computer Games) Amendment Act 2004
(No. 61, 2004)

Schedule 1

16 Application of amendments

- (1) The amendments made by this Schedule apply to the doing of things at or after the commencement of this Schedule.
- (2) The insertion of subsection 7(4) by item 6 of this Schedule does not affect the interpretation of section 7 of the *Classification (Publications, Films and Computer Games) Act 1995* as in force before the inclusion of the subsection.

17 Conversion of certain pre-commencement classifications of films to equivalent new classifications

If, just before this Schedule commenced, a film had a classification of a type mentioned in column 2 of the following table in relation to an item, then, for the purpose of applying the *Classification (Publications, Films and Computer Games) Act 1995* after this Schedule commences, the film is taken to have, and to have had at all times before this Schedule commenced when it had that classification, the classification of the type mentioned in column 3 of the table in relation to the item:

Film classifications		
Column 1	Column 2	Column 3
Item	Former type of classification	New type of classification
1	MA	MA 15+
2	R	R 18+
3	X	X 18+

Table A

18 Conversion of certain pre-commencement classifications of computer games to equivalent new classifications

If, just before this Schedule commences, a computer game had a classification of a type mentioned in column 2 of the following table in relation to an item, then, for the purpose of applying the *Classification (Publications, Films and Computer Games) Act 1995* after this Schedule commences, the computer game is taken to have, and to have had at all times before this Schedule commenced when it had that classification, the classification of the type mentioned in column 3 of the table in relation to the item:

Computer game classifications		
Column 1	Column 2	Column 3
Item	Former type of classification	New type of classification
1	G (8+)	PG
2	M (15+)	M
3	MA (15+)	MA 15+

19 Amendments not to affect validity of pre-commencement applications

The amendments made by this Schedule do not affect the validity, for the purposes of applying the *Classification (Publications, Films and Computer Games) Act 1995* after this Schedule commences, of any application made under that Act before the commencement of this Schedule.

20 Markings for classifications

- (1) After this Schedule commences, the Director may, under subsection 8(1) of the *Classification (Publications, Films and Computer Games) Act 1995*, determine:
 - (a) markings for types of classifications that existed before the commencement of this Schedule; and
 - (b) the manner in which the markings are to be displayed.

Table A

- (2) To avoid doubt, the Director may under subitem (1) determine:
- (a) a marking that is the same as a marking that the Director has determined for a type of classification that exists after this Schedule commences; and
 - (b) a manner in which a marking is to be displayed that is the same as the manner in which a marking for a type of classification that exists after this Schedule commences is to be displayed.

21 Giving of certain documents referring to former types of classifications

- (1) To avoid doubt, if:
- (a) after the commencement of this Schedule, the Director is required under section 27 of the *Classification (Publications, Films and Computer Games) Act 1995* to give a copy of a classification certificate or of a notice under section 26 of that Act; and
 - (b) the classification certificate or notice was issued before the commencement of this Schedule and refers to a type of classification that, after the commencement of this Schedule, is no longer set out in section 7 of that Act;

the Director must give a copy of the classification certificate or notice that was issued, despite the certificate or notice referring to a type of classification that is no longer set out in section 7 of that Act.

- (2) To avoid doubt, if:
- (a) after the commencement of this Schedule, the Director is required under section 87 of the *Classification (Publications, Films and Computer Games) Act 1995* to give a certificate about action taken, or not taken, under that Act; and
 - (b) the certificate is required to refer to a type of classification that, after the commencement of this Schedule, is no longer set out in section 7 of that Act;

the Director must refer in the certificate to the type of classification, despite the type no longer being set out in section 7 of that Act.

Table A

Classification (Publications, Films and Computer Games) Amendment Act 2007
(No. 27, 2007)

Schedule 1

18 Transitional provision—training

If:

- (a) before the commencement of item 4 of this Schedule, a person had completed training by the Office of Film and Literature Classification in the making of assessments; and
- (b) immediately before that commencement, the person was authorised by the Director for the purposes of subsection 17(3) of the *Classification (Publications, Films and Computer Games) Act 1995*;

then, on and after that commencement, the person is taken to have completed training approved by the Director in the making of assessments.

19 Application provision—annual report

- (1) The amendment made by item 9 of this Schedule applies to annual reports required to be given after the commencement of that item.
- (2) Section 67 of the *Classification (Publications, Films and Computer Games) Act 1995*, as in force immediately before the commencement of item 9 of this Schedule, continues to apply as if subsection 67(1) were as follows:
 - (1) As soon as practicable after the end of the financial year in which item 9 of Schedule 1 to the *Classification (Publications, Films and Computer Games) Amendment Act 2007* commences, the Director must give to the Minister:
 - (a) a report of the management of the administrative affairs of the Board for the part of the financial year that occurred before that commencement; and
 - (b) financial statements for the Board and the Review Board for the part of the financial year that occurred before that commencement.

Table A

20 Application provision—audit

- (1) The amendment made by item 11 of this Schedule applies to financial years that commence on or after the commencement of that item.
- (2) This subitem applies if, before the commencement of item 11 of this Schedule, the Auditor-General had not complied with section 69 of the *Classification (Publications, Films and Computer Games) Act 1995* for the financial year in which that item commences.
- (3) If subitem (2) applies, section 69 of the *Classification (Publications, Films and Computer Games) Act 1995*, as in force immediately before the commencement of item 11 of this Schedule, continues to apply as if subsection 69(1) were as follows:
 - (1) The Auditor-General must, within 3 months after the end of the financial year in which item 11 of Schedule 1 to the *Classification (Publications, Films and Computer Games) Amendment Act 2007* commences, inspect and audit:
 - (a) the accounts and records of financial transactions relating to the administration of the affairs of the Board and of the Review Board; and
 - (b) the records relating to assets held by, or in the custody of, the Director on behalf of the Commonwealth;for the part of the financial year that occurred before the commencement of that item.

21 Application provision—access to accounts and records

Despite the repeal of section 70 of the *Classification (Publications, Films and Computer Games) Act 1995* by item 12 of this Schedule, that section continues to apply, in relation to accounts and records mentioned in subsection 70(1) of that Act (as in force before the commencement of that item) that relate to the whole or part of any financial years that occurred before the commencement of that item, as if that repeal had not happened.

Table A

Schedule 2

27 Application provisions

- (1) The amendments made by items 2 and 8 of this Schedule apply to decisions made, and actions taken, by the Convenor before or after the commencement of those items.
- (2) The amendments made by items 3 and 4 of this Schedule apply to publications, films and computer games that are classified by the Review Board on or after the commencement of those items, whether the application for review of the decision in relation to the publication, film or computer game is made before or after the commencement of those items.
- (3) The amendment made by item 5 of this Schedule applies to applications made to the Director on or after the commencement of that item.
- (4) The amendment made by item 7 of this Schedule applies to the making of a requirement on or after the commencement of that item, in relation to applications for review that are made before or after commencement.
- (5) The amendments made by items 13 and 26 of this Schedule apply in relation to judicial or other proceedings commenced after the commencement of those items, whether the thing was done before or after the commencement of those items.
- (6) The amendment made by item 16 of this Schedule applies in relation to decisions of the Director made on or after the commencement of that item.
- (7) The amendments made by items 17 and 18 of this Schedule apply in relation to applications made on or after the commencement of those items.
- (8) The amendment made by item 19 of this Schedule applies in relation to:
 - (a) applications for review made on or after the commencement of that item; and
 - (b) annual reports given to the Minister under section 85 of the *Classification (Publications, Films and Computer Games) Act 1995* for the financial year in which the item commences, and for later financial years.

Table A

- (9) The amendments made by items 21 to 24 of this Schedule apply in relation to applications made on or after the commencement of those items.
- (10) The amendment made by item 25 of this Schedule applies in relation to decisions of the Director or Convenor made on or after the commencement of that item.

28 Transitional provision—fee waiver principles

- (1) This item applies to written principles that were:
- (a) determined under subsection 91(1A) of the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (b) in force immediately before the commencement of item 22 of this Schedule.
- (2) The written principles have effect, and may be dealt with, in relation to the waiver of fees by the Director under subsection 91(1) of the *Classification (Publications, Films and Computer Games) Act 1995* (as amended by this Act) after the commencement of item 22 of this Schedule, as if they had been determined under subsection 91(1B) of the *Classification (Publications, Films and Computer Games) Act 1995* as inserted by this Act.

29 Transitional provision—powers of the Director

Despite the amendment made to section 44A of the *Classification (Publications, Films and Computer Games) Act 1995* by item 7 of this Schedule, a provision of a law of a State or the Northern Territory is to be taken, for the purposes of paragraph 53(a) of the *Classification (Publications, Films and Computer Games) Act 1995*, to correspond to section 44A of that Act during the period that:

- (a) starts when that item commences; and
- (b) ends when item 9 of this Schedule commences.

Schedule 3

13 Application of amendments

- (1) The amendments made by items 1 to 4 and item 6 of this Schedule apply to applications for classification of films made on or after the commencement of those items.

Table A

- (2) The amendment made by item 5 of this Schedule applies to applications for classification of films and computer games made on or after the commencement of that item.
- (3) On and after the commencement of item 7 of this Schedule, the amendment made by that item applies to films (*new films*) that are contained on one device and consist only of 2 or more classified films:
 - (a) whether the new films were created before or after the commencement of that item; and
 - (b) whether the classified films were classified before or after the commencement of that item.
- (4) The amendment made by item 8 of this Schedule applies to modifications made to classified films after the commencement of that item, whether the film was classified before or after the commencement of that item.

Schedule 4

2 Application provision

The amendment made by item 1 of this Schedule applies to applications for classification made on or after the commencement of that item.

4 Application provision

The amendment made by item 3 of this Schedule applies to:

- (a) applications for approval of advertisements for publications, films and computer games; and
- (b) applications for review of decisions to approve or refuse to approve advertisements for publications, films or computer games;

that are made on or after the commencement of that item.

Table A

The following provision commences on 15 March 2008 unless proclaimed earlier:

Schedule 4

13 Transitional provision—determined markings

- (1) This item applies to a determination that was in force under section 8 of the *Classification (Publications, Films and Computer Games) Act 1995* immediately before the commencement of item 12 of this Schedule.
- (2) The determination has effect, after the commencement of that item, as if it had been made under section 8 of the *Classification (Publications, Films and Computer Games) Act 1995* as amended by this Schedule.

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007 (No. 128, 2007)

3 Northern Territory (Self-Government) Act

Section 49 of the *Northern Territory (Self-Government) Act 1978* does not apply in relation to the provisions of this Act.

4 Racial Discrimination Act

- (1) Subject to subsection (3), the provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the *Racial Discrimination Act 1975*, special measures.
- (2) Subject to subsection (3), the provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the *Racial Discrimination Act 1975*.
- (3) Subsections (1) and (2) do not apply to amendments or repeals made by Division 2 or 3 of Part 1 of Schedule 2 (law enforcement) to this Act.
- (4) In this section, a reference to:
 - (a) any acts done includes a reference to any failure to do an act;
and

Table A

- (b) provisions of this Act includes a reference to provisions of other Acts that are inserted, amended or repealed by the provisions of this Act.

5 Some Northern Territory laws excluded

- (1) Subject to subsections (3) and (4), the provisions of this Act are intended to apply to the exclusion of a law of the Northern Territory that deals with discrimination so far as it would otherwise apply.
- (2) Subject to subsections (3) and (4), any acts done under or for the purposes of the provisions of this Act have effect despite any law of the Northern Territory that deals with discrimination.

Northern Territory laws that are not excluded

- (3) Subsections (1) and (2) do not apply to a law of the Northern Territory so far as the Minister determines, by legislative instrument, that the law is a law to which subsections (1) and (2) do not apply.

Provisions of this Act that are not excluded

- (4) Subsections (1) and (2) do not apply to amendments or repeals made by Division 2 or 3 of Part 1 of Schedule 2 (law enforcement) to this Act.

Interpretation

- (5) In this section, a reference to:
- (a) any acts done includes a reference to any failure to do an act; and
- (b) provisions of this Act includes a reference to provisions of other Acts that are inserted, amended or repealed by the provisions of this Act.
-

Table A

Classification (Publications, Films and Computer Games) Amendment
(Terrorist Material) Act 2007 (No. 179, 2007)

Schedule 1

4 Application

The amendments made by items 2 and 3 apply in relation to decisions made by the Board or Review Board on or after the commencement of this item.