

Version No. 001
Classification (Publications, Films and
Computer Games) (Enforcement) Act 1995

Act No. 90/1995

Version as at 28 July 1997

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	1
3. Definitions	2
4. Exhibition of film	6
5. Application	6
PART 2—FILMS	8
Division 1—Exhibition of Films	8
6. Exhibition of film in public place	8
7. Display of notice about classifications	8
8. Exhibition of RC and X films	8
9. Exhibition of unclassified, RC, X, R and MA films	9
10. Attendance of minor at certain films—offence by parents etc.	9
11. Attendance of minor at certain films—offence by minor	9
12. Private exhibition of certain films in presence of a minor	10
13. Attendance of minor at R film—offence by exhibitor	10
14. Attendance of minor at MA film—offence by exhibitor	11
Division 2—Sale of Films	12
15. Unclassified, RC and X films	12
16. Classified films	12
17. Display of notice about classifications	12
18. Films to bear determined markings and consumer advice	13
19. Keeping unclassified, RC or X films with other films	14
20. Sale or delivery of certain films to minors	14

<i>Section</i>	<i>Page</i>
Division 3—Miscellaneous	15
21. Power to demand name, age and address	15
22. Leaving films in certain places	17
23. Possession or copying of film for the purpose of sale or exhibition	18
24. Making objectionable film	19
PART 3—PUBLICATIONS	20
25. Sale of unclassified or RC publications	20
26. Category 1 restricted publications	20
27. Category 2 restricted publications	21
28. Misleading or deceptive markings	22
29. Sale of restricted publications to minors	22
30. Leaving publications in certain places	23
31. Possession or copying of publication for the purpose of publishing	24
32. Producing objectionable publications	25
33. Display of certain parts of publications and advertisements	25
PART 4—COMPUTER GAMES	27
34. Sale or demonstration of computer game	27
35. Display of notice about classifications	27
36. Unclassified and RC computer games	27
37. MA (15+) computer games	28
38. Demonstration of unclassified, RC and MA (15+) computer games	28
39. Private demonstration of RC computer games in presence of a minor	28
40. Computer games to bear determined markings and consumer advice	29
41. Keeping unclassified or RC computer games with other computer games	30
42. Sale or delivery of certain computer games to minors	31
43. Power to demand name, age and address	31
44. Leaving computer games in certain places	33
45. Possession or copying of computer game for the purpose of sale or demonstration	34
PART 5—ADVERTISEMENTS	36
46. Certain advertisements not to be published	36
47. Certain films, publications and computer games not to be advertised	36
48. Screening of advertisements with feature films	37

<i>Section</i>	<i>Page</i>
49. Liability for certain advertisements	38
50. Sale of feature films with advertisements	38
51. Advertisements with computer games	39
52. Advertisement to contain determined markings and consumer advice	40
53. Misleading or deceptive advertisements	40
54. Advertisements for Category 2 restricted publications	42
55. Classification symbols etc. to be published with advertisements	42
PART 6—ON-LINE INFORMATION SERVICES	44
56. Definitions	44
57. Publication or transmission of objectionable material	45
58. Publication or transmission of certain material to minors	46
59. Advertising of objectionable material etc.	47
PART 7—CALL-IN PROVISIONS	49
60. Calling in submittable publications for classification	49
61. Calling in computer games for classification	50
62. Calling in advertisements	50
PART 8—EXEMPTIONS	52
63. Exemption of film, publication, computer game or advertisement	52
64. Exemption of approved organisation	52
65. Ministerial directions or guidelines	52
66. Organisation may be approved	52
67. Application by approved organisation for exemption	53
PART 9—ENFORCEMENT	55
68. Interpretation	55
69. Entry, search and seizure	55
70. Informed consent	55
71. Search warrant	56
72. Announcement before entry	58
73. Details of warrant to be given to occupier	58
74. Seizure of things not mentioned in warrant	58
75. Forfeiture	59
PART 10—GENERAL	61
76. Restricted publications area—construction and management	61
77. Restricted publications area—offences	61
78. Evidence	62
79. Commencement of prosecution for an offence	62
80. Proceeding against body corporate	63

<i>Section</i>	<i>Page</i>
81. Employees and agents	63
82. Costs	64
83. Publication to prescribed person or body	64
84. Regulations	65
PART 11—REPEALS, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS	66
85. Repeal	66
86. Consequential amendment	66
87. Transitional and saving provisions	66
PART 12—AMENDMENT OF THE CRIMES ACT	69
88. Insertion of new Subdivision 13	69
(13) <i>Child Pornography</i>	69
67A. Definitions	69
68. Production of child pornography	70
69. Procurement of minor for child pornography	70
70. Possession of child pornography	71
SCHEDULE—Restricted Publications Area	73
NOTES	74
1. General Information	74
2. Table of Amendments	75
3. Explanatory Details	76

Version No. 001

**Classification (Publications, Films and
Computer Games) (Enforcement) Act 1995**

Act No. 90/1995

Version as at 28 July 1997

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to give effect to the Commonwealth/State/Territory scheme for the classification of publications, films and computer games set out in the Classification (Publications, Films and Computer Games) Act 1995 of the Commonwealth by—

- (a) providing for the enforcement of classification decisions made under that Act; and
- (b) prohibiting the publishing of certain publications, films and computer games; and
- (c) prohibiting certain material on on-line information services.

2. Commencement

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 12

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 3

months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

3. Definitions

In this Act—

"acceptable proof of age", in relation to a person, means documentary evidence that might reasonably be accepted as applying to the person and as showing that the person is an adult;

"adult" means a person who is 18 or older;

"advertisement" has the same meaning as in the Commonwealth Act;

"approved advertisement" means an advertisement approved under section 29 of the Commonwealth Act;

"approved form" means a form approved by the Director and published in the Commonwealth Gazette;

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

"business day" means a day other than a Saturday, a Sunday or a public holiday appointed under the **Public Holidays Act 1993**;

"buy" means buy or exchange or hire and includes offer to buy or exchange or hire, agree to buy, exchange or hire and cause or permit to be bought or exchanged or hired, whether by retail or wholesale;

"classification certificate" means a certificate issued under section 25 of the Commonwealth Act;

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 3

Act No. 90/1995

"classified" means classified under the Commonwealth Act and includes re-classified under that Act;

"Code" means the National Classification Code set out in the Schedule to the Commonwealth Act, or that Code as amended in accordance with section 6 of the Commonwealth Act;

"Commonwealth Act" means the Classification (Publications, Films and Computer Games) Act 1995 of the Commonwealth;

"Commonwealth Gazette" means the Commonwealth of Australia Gazette;

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

"consumer advice" means consumer advice determined under section 20 of the Commonwealth Act;

"contentious material", in relation to a computer game, means material in the computer game that a reasonable adult would consider unsuitable for viewing or playing by a person under 15;

"court" means the Magistrates' Court;

"demonstrate" includes exhibit, display, screen or make available for playing;

"Deputy Director" means Deputy Director of the Classification Board appointed under section 48 of the Commonwealth Act;

"determined markings" means markings determined under section 8 of the Commonwealth Act;

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 3

"Director" means Director of the Classification Board appointed under section 48 of the Commonwealth Act;

"exhibit", in relation to a film, means project or screen;

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

"guardian" means an adult who is exercising parental control over a minor;

"minor" means a person who is under 18;

"objectionable film" means a film or an advertisement for a film, not being an approved advertisement, that—

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult; or
- (b) describes or depicts a person who is, or looks like, a minor under 16 engaging in sexual activity or depicted in an indecent sexual manner or context; or
- (c) promotes, incites or instructs in matters of crime or violence; or
- (d) is classified RC or X or would, if classified, be classified RC or X or has been, or would be, refused approval, as the case requires;

"objectionable publication" means a publication that—

- (a) describes, depicts, expresses or otherwise deals with matters of sex,

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 3

Act No. 90/1995

drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult; or

- (b) lacks serious literary, artistic, political, educational or scientific value and describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that a reasonable adult would generally regard as unsuitable for minors; or
- (c) describes or depicts a person who is, or looks like, a minor under 16 engaging in sexual activity or depicted in an indecent sexual manner or context; or
- (d) promotes, incites or instructs in matters of crime or violence; or
- (e) is classified RC or would, if classified, be classified RC;

"place" includes vacant land, premises, a vehicle, a vessel and an aircraft;

"public place" means any place which the public is entitled to use or which is open to, or used by the public, whether on payment of money or otherwise;

"publication" has the same meaning as in the Commonwealth Act;

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

"restricted publications area" means any premises, or part of any premises,

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 5

constructed and managed in accordance with section 76;

"sell" means sell or exchange or let on hire, and includes offer or display for sale or exchange or hire, agree to sell, exchange or hire and cause or permit to be sold or exchanged or hired, whether by retail or wholesale;

"submittable publication" means an unclassified publication that, having regard to the Code and the classification guidelines determined under section 12 of the Commonwealth Act to the extent that they relate to publications, contains depictions or descriptions of sexual matters, drugs, nudity or violence that are likely to cause offence to a reasonable adult to the extent that the publication should not be sold as an unrestricted publication and includes a publication called in by the Director under section 60.

4. *Exhibition of film*

For the purposes of this Act, a person is taken to exhibit a film in a public place if the person—

- (a) arranges or conducts the exhibition of the film in the public place; or
- (b) has the superintendence or management of the public place in which the film is exhibited.

5. *Application*

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

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995
Act No. 90/1995*

PART 2—FILMS

Division 1—Exhibition of Films

6. *Exhibition of film in public place*

A person must not exhibit a film in a public place unless the film—

- (a) is classified; and
- (b) is exhibited with the same title as that under which it is classified; and
- (c) is exhibited in the form, without alteration or addition, in which it is classified.

Penalty: 240 penalty units or imprisonment for 2 years.

7. *Display of notice about classifications*

A person who exhibits a film in a public place must keep a notice in the approved form about classifications for films on display in a prominent place in that public place so that the notice is clearly visible to the public.

Penalty: 5 penalty units.

8. *Exhibition of RC and X films*

A person must not exhibit in a public place a film classified RC or X.

Penalty:

- (a) if the film is classified X—60 penalty units or imprisonment for 6 months;
- (b) if the film is classified RC—240 penalty units or imprisonment for 2 years.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 9

Act No. 90/1995

9. *Exhibition of unclassified, RC, X, R and MA films*

A person must not exhibit any of the following so that it can be seen from a public place—

- (a) an unclassified film which would, if classified, be classified RC, X, R or MA; or
- (b) a film classified RC, X, R or MA.

Penalty:

- (c) if the film is classified, or is subsequently classified, MA or R—20 penalty units;
- (d) if the film is classified, or is subsequently classified, X—60 penalty units or imprisonment for 6 months;
- (e) if the film is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.

10. *Attendance of minor at certain films—offence by parents etc.*

A person who—

- (a) is a parent or guardian of a minor; and
- (b) knows that a film classified RC, X or R or an unclassified film which would, if classified, be classified RC, X or R is to be exhibited in a public place—

must not permit the minor to attend the exhibition of the film.

Penalty: 20 penalty units.

11. *Attendance of minor at certain films—offence by minor*

A minor who is 10 or older must not attend the exhibition in a public place of a film classified RC, X or R, knowing that the film is so classified.

Penalty: 5 penalty units.

12. *Private exhibition of certain films in presence of a minor*

- (1) A person must not exhibit in a place, other than a public place, in the presence of a minor a film classified RC, X or R or an unclassified film which would, if classified, be classified RC, X or R.

Penalty:

- (a) if the film is classified, or is subsequently classified, R—20 penalty units;
- (b) if the film is classified, or is subsequently classified, X—60 penalty units or imprisonment for 6 months;
- (c) if the film is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that—
- (a) the defendant believed on reasonable grounds that the minor was an adult; or
- (b) the parent or guardian of the minor consented to the minor being present at the exhibition of the film.

13. *Attendance of minor at R film—offence by exhibitor*

- (1) A person must not exhibit in a public place a film classified R if a minor is present during any part of the exhibition.

Penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that—
- (a) the minor produced to the defendant or the defendant's employee or agent acceptable

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 14

Act No. 90/1995

proof of age before the minor was admitted to the public place; or

- (b) the defendant or the defendant's employee or agent believed on reasonable grounds that the minor was an adult.

14. Attendance of minor at MA film—offence by exhibitor

- (1) A person must not exhibit in a public place a film classified MA if—

- (a) a minor under 15 is present during any part of the exhibition; and
- (b) the minor is not accompanied by his or her parent or guardian.

Penalty: 10 penalty units.

- (2) For the purposes of sub-section (1)—

- (a) a minor does not cease to be accompanied if his or her parent or guardian is temporarily absent from the exhibition of the film; and
- (b) an offence is committed in respect of each unaccompanied minor present at the exhibition of the film.

- (3) It is a defence to a prosecution for an offence against sub-section (1) to prove that—

- (a) the defendant or the defendant's employee or agent took all reasonable steps to ensure that a minor was not present in contravention of sub-section (1); or
 - (b) the defendant or the defendant's employee or agent believed on reasonable grounds that the minor was 15 or older; or
 - (c) the defendant or the defendant's employee or agent believed on reasonable grounds that
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the person accompanying the minor was the minor's parent or guardian.

Division 2—Sale of Films

15. *Unclassified, RC and X films*

A person must not sell an unclassified film or a film classified RC or X.

Penalty:

- (a) if the film is subsequently classified G, PG or M—5 penalty units;
- (b) if the film is subsequently classified MA or R—10 penalty units;
- (c) if the film is classified or is subsequently classified X—60 penalty units or imprisonment for 6 months;
- (d) if the film is classified or is subsequently classified RC—240 penalty units or imprisonment for 2 years.

16. *Classified films*

A person must not sell a classified film unless the film is sold—

- (a) under the same title as that under which it is classified; and
- (b) in the form, without alteration or addition, in which it is classified.

Penalty: 240 penalty units or imprisonment for 2 years.

17. *Display of notice about classifications*

A person who sells films on any premises must keep a notice in the approved form about classifications for films on display in a prominent

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 18

Act No. 90/1995

place on the premises so that the notice is clearly visible to the public.

Penalty: 5 penalty units.

18. *Films to bear determined markings and consumer advice*

- (1) A person must not sell a film unless the determined markings relevant to the classification of the film and relevant consumer advice, if any, are displayed on the container, wrapping or casing of the film.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (2) A person must not sell an unclassified film if the container, wrapping or casing in which the film is sold bears a marking that indicates or suggests that the film has been classified.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (3) A person must not sell a classified film if the container, wrapping or casing in which the film is sold bears a marking that indicates or suggests that the film is unclassified or has a different classification.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (4) If a film is reclassified under section 39 of the Commonwealth Act, display of the determined markings and consumer advice applicable to the film before reclassification is sufficient
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*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 19

compliance with this section for a period of 14 days after the decision to reclassify takes effect.

19. *Keeping unclassified, RC or X films with other films*

- (1) If a person keeps or possesses an unclassified film or a film classified RC or X on any premises where classified films are sold, the person and the occupier of the premises are each guilty of an offence punishable on conviction by—
 - (a) if the film is classified, or is subsequently classified, X—a fine not exceeding 60 penalty units or imprisonment not exceeding 6 months;
 - (b) if the film is classified, or is subsequently classified, RC—a fine not exceeding 240 penalty units or imprisonment not exceeding 2 years.
- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that the defendant did not know, and could not reasonably have known, that the film was on the premises.

20. *Sale or delivery of certain films to minors*

- (1) A person must not sell or deliver to a minor a film classified RC or X or an unclassified film which would, if classified, be classified RC or X.
Penalty:
 - (a) if the film is classified, or is subsequently classified, X—60 penalty units or imprisonment for 6 months;
 - (b) if the film is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (2) A person must not sell or deliver to a minor a film classified R, unless the person is a parent or guardian of the minor.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 21

Act No. 90/1995

Penalty: 30 penalty units.

- (3) It is a defence to a prosecution for an offence against sub-section (2) to prove that—
- (a) the minor produced to the defendant or the defendant's employee or agent acceptable proof of age before the defendant sold or delivered the film to the minor and the defendant or the defendant's employee or agent believed on reasonable grounds that the minor was an adult; or
 - (b) in the case of delivery of a film classified R, the minor was employed by the defendant or the defendant's employer and the delivery took place in the course of that employment.
- (4) A minor who is 15 or older must not buy a film classified RC, X or R knowing that it is so classified.

Penalty: 5 penalty units.

- (5) A person must not sell or deliver to a minor under 15 a film classified MA, unless the person is a parent or guardian of the minor.

Penalty: 10 penalty units.

- (6) It is a defence to a prosecution for an offence against sub-section (5) to prove that the defendant or the defendant's employee or agent believed on reasonable grounds that—
- (a) the minor was 15 or older; or
 - (b) the parent or guardian of the minor had consented to the sale or delivery.

Division 3—Miscellaneous

21. Power to demand name, age and address

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995
Act No. 90/1995*

- (1) A member of the police force who has reasonable cause to suspect that a person to whom a film is being or is about to be exhibited, sold or delivered has contravened or is about to contravene a provision of this Part may demand the person's name, age and address.
- (2) A member of the police force who makes a request under sub-section (1) must inform the person of the grounds for his or her suspicion in sufficient detail to allow the person to understand the nature of the contravention.
- (3) Subject to sub-section (8), a person must not give false particulars or fail or refuse to give satisfactory particulars demanded under sub-section (1).

Penalty: 5 penalty units.

- (4) A person who is requested by a member under sub-section (1) to state his or her name, age and address may request the member to state, orally or in writing, his or her name, rank and place of duty.
- (5) A member of the police force must not, in response to a request under sub-section (4)—
 - (a) refuse or fail to comply with the request; or
 - (b) state a name or rank that is false in a material particular; or
 - (c) state as his or her place of duty an address other than the name of the police station which is the member's ordinary place of duty; or
 - (d) refuse to comply with the request in writing if requested to do so.

Penalty: 5 penalty units.

- (6) If a member of the police force has reasonable grounds to believe that any of the particulars

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 22

Act No. 90/1995

given by a person under sub-section (1) are false, the member may require the person to produce within a reasonable time evidence of the correctness of the particulars given by the person.

- (7) A person must not fail or refuse to produce satisfactory evidence of the correctness of particulars required under sub-section (6).

Penalty: 1 penalty unit.

- (8) If—

- (a) a film is about to be exhibited in a public place in contravention of this Part; and
- (b) a demand under sub-section (1) is made to a person attending the exhibition; and
- (c) the person immediately leaves the public place after the demand is made—

the person is not guilty of an offence against sub-section (3).

22. *Leaving films in certain places*

- (1) A person must not leave in a public place or, without the occupier's permission, on private premises—

- (a) a film classified RC, X, R or MA; or
- (b) an unclassified film which would, if classified, be classified RC, X, R or MA.

Penalty:

- (c) if the film is classified, or is subsequently classified, R or MA—10 penalty units;
- (d) if the film is classified, or is subsequently classified, X—60 penalty units or imprisonment for 6 months;

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 23

(e) if the film is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.

(2) It is a defence to a prosecution for an offence against sub-section (1) to prove that the defendant believed on reasonable grounds that the film was not, or would not be, so classified.

23. Possession or copying of film for the purpose of sale or exhibition

(1) A person who possesses—

(a) a film classified RC or X; or

(b) an unclassified film which would, if classified, be classified RC, X, R or MA—

with the intention of selling or exhibiting the film is guilty of an offence.

(2) A person who copies—

(a) a film classified RC or X; or

(b) an unclassified film which would, if classified, be classified RC, X, R or MA—

with the intention of selling or exhibiting the film or the copy is guilty of an offence.

(3) In proceedings for an offence against this section, evidence that a person made 10 or more copies of an unclassified film is evidence that the person intended to sell or exhibit the film and, in the absence of evidence to the contrary, is proof of that fact.

(4) A person who is guilty of an offence against this section is liable on conviction to—

(a) if the film is classified, or is subsequently classified, R or MA—a fine not exceeding 10 penalty units;

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 24

Act No. 90/1995

- (b) if the film is classified, or is subsequently classified, X—a fine not exceeding 60 penalty units or imprisonment not exceeding 6 months;
- (c) if the film is classified, or is subsequently classified, RC—a fine not exceeding 240 penalty units or imprisonment not exceeding 2 years.

24. Making objectionable film

- (1) A person must not, for the purpose of gain, make or produce an objectionable film.

Penalty: 240 penalty units or imprisonment for 2 years.

- (2) A prosecution for an offence against this section may be brought at any time.
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PART 3—PUBLICATIONS

25. *Sale of unclassified or RC publications*

(1) A person must not sell or deliver (other than for the purpose of classification or law enforcement)—

- (a) a submittable publication; or
- (b) a publication classified RC.

Penalty:

- (c) if the publication is subsequently classified Category 1 restricted or Category 2 restricted—60 penalty units;
 - (d) if the publication is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (2) It is a defence to a prosecution for an offence against sub-section (1)(a) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.
- (3) It is a defence to a prosecution for an offence against sub-section (1) to prove that the defendant believed on reasonable grounds that the publication was not a submittable publication or a publication classified RC, as the case may be.

26. *Category 1 restricted publications*

(1) Subject to sub-section (2), a person must not sell or deliver a publication classified Category 1 restricted unless it is contained in a sealed package and—

- (a) if the packaging is a transparent material, the publication bears the determined markings;

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 27

Act No. 90/1995

(b) if the packaging is an opaque material, both the publication and the package bear the determined markings.

Penalty: 60 penalty units or imprisonment for 6 months.

(2) If the sale or delivery takes place in a restricted publications area, the package need not be sealed but on delivery must be contained in an opaque wrapper.

(3) If a publication is reclassified under section 39 of the Commonwealth Act, it is sufficient compliance with sub-section (1) for a period of 14 days after the decision to reclassify takes effect if the publication bears the determined markings applicable to the publication before reclassification.

27. *Category 2 restricted publications*

(1) A publication that is classified Category 2 restricted must not be—

(a) displayed except in a restricted publications area; or

(b) delivered to a person who has not made a direct request for the publication; or

(c) delivered to a person unless it is contained in a package made of opaque material; or

(d) published unless it bears the determined markings.

(2) A person must not sell, deliver or publish a publication classified Category 2 restricted that does not comply with this section.

Penalty: 60 penalty units or imprisonment for 6 months.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 28

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- (3) If a publication is reclassified under section 39 of the Commonwealth Act, it is sufficient compliance with sub-section (1)(d) for a period of 14 days after the decision to reclassify takes effect if the publication bears the determined markings applicable to the publication before reclassification.

28. *Misleading or deceptive markings*

- (1) A person must not publish an unclassified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication has been classified.

Penalty: 60 penalty units or imprisonment for 6 months.

- (2) A person must not publish a classified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication is unclassified or has a different classification.

Penalty: 60 penalty units or imprisonment for 6 months.

- (3) If a publication is reclassified under section 39 of the Commonwealth Act, it is sufficient compliance with this section for a period of 14 days after the decision to reclassify takes effect if the publication bears the determined markings applicable to the publication before reclassification.

29. *Sale of restricted publications to minors*

- (1) A person must not sell or deliver to a minor a publication classified Category 1 restricted or Category 2 restricted, unless the person is a parent or guardian of the minor.

Penalty: 60 penalty units or imprisonment for 6 months.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 30

Act No. 90/1995

- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that the minor produced to the defendant acceptable proof of age before the defendant sold or delivered the publication to the minor and the defendant believed on reasonable grounds that the minor was an adult.

30. *Leaving publications in certain places*

- (1) A person must not leave in a public place or display in such a manner as to be visible to persons in a public place—
- (a) a submittable publication; or
 - (b) a publication classified Category 1 restricted, Category 2 restricted or RC.

Penalty:

- (c) if the publication is classified, or is subsequently classified, Category 1 restricted or Category 2 restricted—60 penalty units or imprisonment for 6 months;
 - (d) if the publication is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that—
- (a) since the offence was alleged to have been committed, the publication has been classified Unrestricted; or
 - (b) the defendant believed on reasonable grounds that the publication was not a submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC, as the case may be; or
 - (c) in the case of a publication classified Category 1 restricted, the public place was a
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*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 30

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- shop or stall and the publication and packaging complied with section 26; or
- (d) in the case of a publication classified Category 2 restricted, the defendant believed on reasonable grounds that the public place was a restricted publications area.
- (3) A person must not leave on private premises, without the occupier's permission—
- (a) a submittable publication; or
- (b) a publication classified Category 1 restricted, Category 2 restricted or RC.
- Penalty:
- (c) if the publication is classified, or is subsequently classified, Category 1 restricted or Category 2 restricted—60 penalty units or imprisonment for 6 months;
- (d) if the publication is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (4) It is a defence to a prosecution for an offence against sub-section (3)(a) to prove that since the offence was alleged to have been committed, the publication has been classified Unrestricted.
- (5) It is a defence to a prosecution for an offence against sub-section (3) to prove that the defendant believed on reasonable grounds that the publication was not a submittable publication or a publication classified Category 1 restricted, Category 2 restricted or RC, as the case may be.

31. *Possession or copying of publication for the purpose of publishing*

- (1) A person must not possess or copy—

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995
Act No. 90/1995*

- (a) a submittable publication; or
- (b) a publication classified RC—

with the intention of selling the publication or the copy.

Penalty:

- (c) if the publication is subsequently classified Category 1 restricted or Category 2 restricted—60 penalty units or imprisonment for 6 months;
 - (d) if the publication is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.

32. *Producing objectionable publications*

- (1) A person must not print or otherwise make or produce an objectionable publication for the purpose of publishing it.

Penalty: 240 penalty units or imprisonment for 2 years.

- (2) A prosecution for an offence against this section may be brought at any time.

33. *Display of certain parts of publications and advertisements*

- (1) A person must not exhibit or display for sale in a public place to which minors have access any publication or advertisement for a publication if any part of that publication or advertisement depicts or deals with nudity, sex, drug misuse, crime, cruelty, violence or revolting phenomena in

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 33

a manner that a reasonable adult would consider unsuitable for general public display unless—

- (a) that part of the publication or advertisement is concealed by a cover; or
- (b) the publication or advertisement is displayed in a rack that conceals that part; or
- (c) for some other reason that part of the publication or advertisement cannot be seen without being handled.

Penalty: 10 penalty units.

- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that the defendant or the defendant's employee or agent took reasonable precautions to ensure that the publication or advertisement was not exhibited or displayed in contravention of sub-section (1).
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PART 4—COMPUTER GAMES

34. *Sale or demonstration of computer game*

A person must not sell a computer game or demonstrate a computer game in a public place unless the computer game—

- (a) is classified; and
- (b) is sold or demonstrated with the same title as that under which it is classified; and
- (c) is sold or demonstrated in the form, without alteration or addition, in which it is classified.

Penalty: 240 penalty units or imprisonment for 2 years.

35. *Display of notice about classifications*

A person who sells or demonstrates a computer game in a public place must keep a notice in the approved form about classifications for computer games on display in a prominent place in that public place so that the notice is clearly visible to the public.

Penalty: 5 penalty units.

36. *Unclassified and RC computer games*

(1) A person must not—

- (a) sell; or
- (b) demonstrate in a public place—

a computer game classified RC or an unclassified computer game which would, if classified, be classified RC.

Penalty: 240 penalty units or imprisonment for 2 years.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 37

- (2) A minor who is 10 or older must not buy a computer game classified RC, knowing that it is so classified.

Penalty: 5 penalty units.

37. MA (15+) computer games

A person must not demonstrate a computer game classified MA (15+) in a public place unless—

- (a) the determined markings are exhibited before the computer game can be played; and
- (b) entry to the place is restricted to adults or minors who are in the care of a parent or guardian while in the public place.

Penalty: 5 penalty units.

38. Demonstration of unclassified, RC and MA (15+) computer games

A person must not demonstrate any of the following so that it can be seen from a public place—

- (a) an unclassified computer game which would, if classified, be classified RC or MA (15+);
or
- (b) a computer game classified RC or MA (15+).

Penalty:

- (c) if the computer game is classified, or is subsequently classified, MA (15+)—20 penalty units;
- (d) if the computer game is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.

39. Private demonstration of RC computer games in presence of a minor

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 40

Act No. 90/1995

- (1) A person must not demonstrate in a place, other than a public place, in the presence of a minor a computer game classified RC or an unclassified computer game which would, if classified, be classified RC.

Penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that—
- (a) the defendant believed on reasonable grounds that the minor was an adult; or
 - (b) the parent or guardian of the minor consented to the minor being present at the demonstration of the computer game.

40. *Computer games to bear determined markings and consumer advice*

- (1) A person must not sell a computer game unless the determined markings relevant to the classification of the computer game and relevant consumer advice, if any, are displayed on the container, wrapping or casing of the computer game.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (2) A person must not sell an unclassified computer game if the container, wrapping or casing in which the computer game is sold bears a marking that indicates or suggests that the computer game has been classified.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 41

- (3) A person must not sell a classified computer game if the container, wrapping or casing in which the computer game is sold bears a marking that indicates or suggests that the computer game is unclassified or has a different classification.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (4) If a computer game is reclassified under section 39 of the Commonwealth Act display of the determined markings and consumer advice applicable to the computer game before reclassification is sufficient compliance with this section for a period of 14 days after the decision to reclassify takes effect.

41. *Keeping unclassified or RC computer games with other computer games*

- (1) If a person keeps or possesses an unclassified computer game or a computer game classified RC on any premises where classified computer games are sold or demonstrated, the person and the occupier of the premises are each guilty of an offence punishable on conviction by—
- (a) if the computer game is subsequently classified MA (15+)—a fine not exceeding 60 penalty units or imprisonment not exceeding 6 months;
 - (b) if the computer game is classified, or is subsequently classified, RC—a fine not exceeding 240 penalty units or imprisonment not exceeding 2 years;
 - (c) in any other case—30 penalty units.
- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that the defendant

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 42

Act No. 90/1995

did not know, and could not reasonably have known, that the computer game was on the premises.

42. *Sale or delivery of certain computer games to minors*

- (1) A person must not sell or deliver to a minor a computer game classified RC or an unclassified computer game which would, if classified, be classified RC.

Penalty: 240 penalty units or imprisonment for 2 years.

- (2) A person must not sell or deliver to a minor who is under 15 a computer game classified MA (15+), unless the person is a parent or guardian of the minor.

Penalty: 30 penalty units.

- (3) It is a defence to a prosecution for an offence against sub-section (2) to prove that the defendant or the defendant's employee or agent believed on reasonable grounds that—

- (a) the minor was 15 or older; or
(b) the parent or guardian of the minor had consented to the sale or delivery.

43. *Power to demand name, age and address*

- (1) A member of the police force who has reasonable cause to suspect that a person to whom a computer game is being or is about to be demonstrated, sold or delivered has contravened or is about to contravene a provision of this Part may demand the person's name, age and address.

- (2) A member of the police force who makes a request under sub-section (1) must inform the person of the grounds for his or her suspicion in sufficient detail to allow the person to understand the nature of the contravention.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 43

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- (3) Subject to sub-section (8), a person must not give false particulars or fail or refuse to give satisfactory particulars demanded under sub-section (1).

Penalty: 5 penalty units.

- (4) A person who is requested by a member under sub-section (1) to state his or her name, age and address may request the member to state, orally or in writing, his or her name, rank and place of duty.

- (5) A member of the police force must not, in response to a request under sub-section (4)—

- (a) refuse or fail to comply with the request; or
- (b) state a name or rank that is false in a material particular; or
- (c) state as his or her place of duty an address other than the name of the police station which is the member's ordinary place of duty; or
- (d) refuse to comply with the request in writing if requested to do so.

Penalty: 5 penalty units.

- (6) If a member of the police force has reasonable grounds to believe that any of the particulars given by a person under sub-section (1) are false, the member may require the person to produce within a reasonable time evidence of the correctness of the particulars given by the person.

- (7) A person must not fail or refuse to produce satisfactory evidence of the correctness of particulars required under sub-section (6).

Penalty: 1 penalty unit.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 44

Act No. 90/1995

(8) If—

- (a) a computer game is about to be demonstrated in a public place in contravention of this Part; and
- (b) a demand under sub-section (1) is made to a person attending the demonstration; and
- (c) the person immediately leaves the public place after the demand is made—

the person is not guilty of an offence against sub-section (3).

44. *Leaving computer games in certain places*

- (1) A person must not leave in a public place or, without the occupier's permission, on private premises—
 - (a) a computer game classified RC or MA (15+); or
 - (b) an unclassified computer game which would, if classified, be classified RC or MA (15+).

Penalty:

- (c) if the computer game is classified, or is subsequently classified, MA (15+)—60 penalty units or imprisonment for 6 months;
 - (d) if the computer game is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years.
- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that the defendant believed on reasonable grounds that the computer game was not, or would not be, so classified.

45. Possession or copying of computer game for the purpose of sale or demonstration

(1) A person must not possess—

- (a) a computer game classified RC; or
- (b) an unclassified computer game—

with the intention of selling or demonstrating the computer game.

Penalty:

- (c) if the computer game is subsequently classified MA (15+)—60 penalty units or imprisonment for 6 months;
- (d) if the computer game is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years;
- (e) in any other case—30 penalty units.

(2) A person must not copy—

- (a) a computer game classified RC; or
- (b) an unclassified computer game—

with the intention of selling or demonstrating the computer game or the copy.

Penalty:

- (c) if the computer game is subsequently classified MA (15+)—60 penalty units or imprisonment for 6 months;
- (d) if the computer game is classified, or is subsequently classified, RC—240 penalty units or imprisonment for 2 years;
- (e) in any other case—30 penalty units.

(3) It is a defence to a prosecution for an offence against sub-section (1) or (2) to prove that since the offence was alleged to have been committed

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 45

Act No. 90/1995

the computer game has been classified M (15+), G (8+) or G.

- (4) In proceedings for an offence against this section, evidence that a person made 10 or more copies of an unclassified computer game is evidence that the person intended to sell or demonstrate the computer game and, in the absence of evidence to the contrary, is proof of that fact.
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PART 5—ADVERTISEMENTS

46. *Certain advertisements not to be published*

A person must not publish an advertisement for a film or publication or computer game—

- (a) if the advertisement has not been submitted for approval under section 29 of the Commonwealth Act and, if submitted, would be refused approval; or
- (b) if the advertisement has been refused approval under section 29 of the Commonwealth Act; or
- (c) if the advertisement is approved under section 29 of the Commonwealth Act, in an altered form to the form in which it is approved; or
- (d) if the advertisement is approved under section 29 of the Commonwealth Act subject to conditions, except in accordance with those conditions.

Penalty: 50 penalty units.

47. *Certain films, publications and computer games not to be advertised*

- (1) A person must not publish an advertisement for—
 - (a) an unclassified film, other than a film in relation to which a certificate of exemption has been granted under section 33 of the Commonwealth Act; or
 - (b) a film classified RC or X; or
 - (c) a submittable publication; or
 - (d) a publication classified RC; or
 - (e) an unclassified computer game; or

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 48

Act No. 90/1995

(f) a computer game classified RC.

Penalty: 50 penalty units.

(2) For the purposes of this section, if—

- (a) a person publishes an advertisement for an unclassified film or an unclassified computer game at the request of another person; and
- (b) the person who publishes the advertisement notifies a member of the police force of the identity of the other person—

that other person alone must be taken to have published it.

48. *Screening of advertisements with feature films*

A person must not screen in a public place an advertisement for a film during a program for the exhibition of another film ("the feature film") unless the feature film has a classification specified in column 1 of an item in the Table and the advertised film has a classification specified opposite it in column 2 of that item.

TABLE

<i>Item</i>	<i>Column 1 Feature film</i>	<i>Column 2 Advertised film</i>
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA	MA, M, PG or G
5	R	R, MA, M, PG or G

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

49. *Liability for certain advertisements*

- (1) A person must not screen in a public place, or so that it can be seen from a public place, an advertisement for a film classified X, R or MA.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that—
- (a) if the advertised film is classified MA, the advertisement was screened during a program for the exhibition of a film classified R or MA; or
 - (b) if the advertised film is classified R, the advertisement was screened during a program for the exhibition of a film classified R; or
 - (c) if the advertised film is classified R or MA, the place in which the advertisement was screened was a restricted publications area.

50. *Sale of feature films with advertisements*

A person must not sell a film ("the feature film") that is accompanied by an advertisement for another film unless the feature film has a classification specified in column 1 of an item in the Table and the advertised film has a classification specified opposite it in column 2 of that item.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 51

Act No. 90/1995

TABLE

<i>Item</i>	<i>Column 1 Feature film</i>	<i>Column 2 Advertised film</i>
1	G	G
2	PG	PG or G
3	M	M, PG or G
4	MA	MA, M, PG or G
5	R	R, MA, M, PG or G

Penalty: in the case of a natural person, 20
penalty units;
in the case of a body corporate, 50
penalty units.

51. Advertisements with computer games

A person must not sell a computer game ("the main game") that is accompanied by an advertisement for another computer game unless the main game has a classification specified in column 1 of an item in the Table and the advertised computer game has a classification specified opposite it in column 2 of that item.

TABLE

<i>Item</i>	<i>Column 1 Main game</i>	<i>Column 2 Advertised computer game</i>
1	G	G
2	G (8+)	G (8+) or G
3	M (15+)	M (15+), G (8+) or G
4	MA (15+)	MA (15+), M (15+), G (8+) or G

Penalty: in the case of a natural person, 20
penalty units;
in the case of a body corporate, 50
penalty units.

52. Advertisement to contain determined markings and consumer advice

- (1) A person must not publish an advertisement for a classified film or a classified publication or a classified computer game unless—
- (a) the advertisement contains the determined markings relevant to the classification of the film, publication or computer game and relevant consumer advice, if any; and
 - (b) the determined markings and consumer advice are displayed—
 - (i) in the manner determined by the Director under section 8 of the Commonwealth Act; and
 - (ii) so as to be clearly visible, having regard to the size and nature of the advertisement.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (2) If a film, publication or computer game is reclassified under section 39 of the Commonwealth Act, display of the determined markings and consumer advice applicable to the film, publication or computer game before reclassification is sufficient compliance with subsection (1) for a period of 14 days after the decision to reclassify takes effect.

53. Misleading or deceptive advertisements

- (1) A person must not publish an advertisement for an unclassified film or an unclassified publication or an unclassified computer game with a marking that indicates or suggests that the film or publication or computer game is classified.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 53

Act No. 90/1995

Penalty:

- (a) if the film, publication or computer game is subsequently classified RC—240 penalty units or imprisonment for 2 years;
 - (b) in the case of a film subsequently classified X—60 penalty units or imprisonment for 6 months;
 - (c) in any other case—
 - in the case of a natural person, 20 penalty units;
 - in the case of a body corporate, 50 penalty units.
- (2) A person must not publish an advertisement for a classified film or a classified publication or a classified computer game with a marking that indicates or suggests that the film or publication or computer game is unclassified or has a different classification.

Penalty:

- (a) if the film, publication or computer game is classified RC—240 penalty units or imprisonment for 2 years;
 - (b) in the case of a film classified X—60 penalty units or imprisonment for 6 months;
 - (c) in any other case—
 - in the case of a natural person, 20 penalty units;
 - in the case of a body corporate, 50 penalty units.
- (3) If a film or publication or computer game is reclassified under section 39 of the Commonwealth Act, publication of the determined markings applicable to the film, publication or computer game before reclassification is sufficient compliance with sub-
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section (2) for a period of
14 days after the decision to reclassify takes
effect.

54. *Advertisements for Category 2 restricted publications*

- (1) A person must not publish an advertisement for a publication classified Category 2 restricted.

Penalty: 60 penalty units or imprisonment for 6 months.

- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that the advertisement was published—

(a) in a publication classified Category 2 restricted; or

(b) in a restricted publications area.

- (3) If an advertisement for a publication classified Category 2 restricted is published in a place other than a restricted publications area, the occupier of the place is guilty of an offence punishable on conviction by a fine not exceeding 60 penalty units or imprisonment not exceeding 6 months.

55. *Classification symbols etc. to be published with advertisements*

A person must not publish a publication containing an advertisement for—

(a) a film; or

(b) a publication classified Category 1 restricted or Category 2 restricted; or

(c) a computer game—

unless the publication also contains a list of the classification symbols and determined markings for films or publications or computer games respectively.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 55

Act No. 90/1995

Penalty: in the case of a natural person, 20
penalty units;
in the case of a body corporate, 50
penalty units.

PART 6—ON-LINE INFORMATION SERVICES

56. Definitions

In this Part—

"material unsuitable for minors of any age"

means—

- (a) objectionable material; or
- (b) a film that is classified R or would, if classified, be classified R; or
- (c) a publication that is classified Category 1 restricted or Category 2 restricted, or would, if classified, be classified Category 1 restricted or Category 2 restricted;

"material unsuitable for minors under 15"

means—

- (a) a film that is classified MA or would, if classified, be classified MA; or
- (b) a computer game that is classified MA (15+) or would, if classified, be classified MA (15+);

"objectionable material" means—

- (a) an objectionable publication; or
- (b) an objectionable film; or
- (c) a computer game that—
 - (i) depicts, expresses 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

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 57

Act No. 90/1995

and propriety generally accepted
by reasonable adults to the extent
that it should not be classified; or

(ii) describes or depicts a person who
is, or looks like, a minor under 16
engaging in sexual activity or
depicted in an indecent sexual
manner or context; or

(iii) promotes, incites or instructs in
matters of crime or violence; or

(iv) is unsuitable for a minor to see or
play; or

(v) is classified RC or would, if classified,
be classified RC;

"on-line information service" means a service
which permits, through a communication
system, on-line computer access to or
transmission of data or computer programs.

57. Publication or transmission of objectionable material

(1) A person must not use an on-line information
service to publish or transmit, or make available
for transmission, objectionable material.

Penalty: 240 penalty units or imprisonment for 2
years.

(2) It is a defence to a prosecution for an offence
against sub-section (1) to prove that the defendant
believed on reasonable grounds that the material
was not objectionable material.

(3) Sub-section (1) does not apply to a person who
provides an on-line information service or a
telecommunication service unless the person
creates or knowingly downloads or copies
objectionable material.

58. *Publication or transmission of certain material to minors*

- (1) A person must not use an on-line information service to publish or transmit, or make available for transmission, to a minor material unsuitable for minors of any age.

Penalty:

- (a) if the material is objectionable material—
240 penalty units or imprisonment for 2 years;
- (b) in any other case—60 penalty units or imprisonment for 6 months.
- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that—
- (a) the defendant—
- (i) did not know and could not reasonably have known that the person to whom the material was published or transmitted or made available for transmission was a minor; and
- (ii) had taken reasonable steps to avoid publishing or transmitting, or making available for transmission, the material to a minor; or
- (b) the defendant believed on reasonable grounds that the material was not material unsuitable for minors of any age.
- (3) Sub-section (1) does not apply to a person who provides an on-line information service or a telecommunication service unless the person knowingly publishes, transmits or makes available for transmission to a minor material unsuitable for minors of any age.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 59

Act No. 90/1995

- (4) A person must not use an on-line information service to publish or transmit, or make available for transmission, material to a minor under 15 knowing it to be material unsuitable for minors under 15.

Penalty: 30 penalty units.

- (5) It is a defence to a prosecution for an offence against sub-section (4) to prove that—
- (a) the defendant believed on reasonable grounds that the parent or guardian of the minor had consented to the material being published or transmitted, or made available for transmission, to the minor; or
 - (b) the defendant—
 - (i) did not know and could not reasonably have known that the person to whom the material was published or transmitted, or made available for transmission, was a minor under 15; and
 - (ii) had taken reasonable steps to prevent publishing or transmitting, or making available for transmission, the material to a minor under 15.
- (6) Sub-section (4) does not apply to a person who provides an on-line information service or a telecommunication service unless the person knowingly publishes, transmits or makes available for transmission to a minor under 15 material unsuitable for minors under 15.

59. Advertising of objectionable material etc.

A person must not—

- (a) publish an advertisement or notice; or
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*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 59

(b) transmit, or make available for transmission, on an on-line information service an advertisement or notice; or

(c) knowingly allow an on-line information service to be used for publishing or transmitting, or making available for transmission, an advertisement or notice—

that objectionable material is available for on-line computer access.

Penalty: 240 penalty units or imprisonment for 2 years.

PART 7—CALL-IN PROVISIONS

60. *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 Victoria, or the Director has reasonable grounds to believe that it will be published in Victoria—

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 sub-section (1) to be published in the Commonwealth 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: 100 penalty units.

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

- (a) to publish the publication in Victoria; or
- (b) to cause, authorise, permit or license the publication to be published in Victoria.

61. *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 Victoria, or the Director has reasonable grounds to believe that it will be published in Victoria—

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 sub-section (1) to be published in the Commonwealth 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: 100 penalty units.

- (4) It is a defence to a prosecution for an offence against sub-section (3) to prove that the defendant did not intend—
- (a) to publish the computer game in Victoria; or
 - (b) to cause, authorise, permit or license the computer game to be published in Victoria.

62. *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

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 62

Act No. 90/1995

- (ii) is being published in Victoria, or the Director has reasonable grounds to believe will be published in Victoria; or
- (b) the publisher of a classified film that is being published in Victoria, or that the Director has reasonable grounds to believe will be published in Victoria; or
- (c) the publisher of a computer game that is being published in Victoria, or that the Director has reasonable grounds to believe will be published in Victoria—

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: 100 penalty units.

- (3) It is a defence to a prosecution for an offence against sub-section (2) to prove that the defendant did not intend—
 - (a) to publish the publication, film or computer game in Victoria; or
 - (b) to cause, authorise, permit or license the publication, film or computer game to be published in Victoria.
-

PART 8—EXEMPTIONS

63. *Exemption of film, publication, computer game or advertisement*

The Director may, on application, direct in writing that this Act does not apply, to the extent and subject to any condition specified in the direction, to or in relation to any film, publication, computer game or advertisement.

64. *Exemption of approved organisation*

The Director may, on application under section 67, direct in writing that this Act does not apply, or any of the provisions of this Act do not apply, to an organisation approved under section 66 in relation to the exhibition of a film at an event, where the film and the event are specified in the direction.

65. *Ministerial directions or guidelines*

In considering whether to make a direction under section 63 or 64, the Director must give effect to any directions or guidelines issued by the Minister in relation to the application of this Act.

66. *Organisation may be approved*

- (1) The Director, by notice published in the Commonwealth Gazette, may, on application, approve an organisation for the purposes of this Part.
- (2) In considering whether to approve an organisation, the Director must have regard to—
 - (a) the purpose for which the organisation was formed; and
 - (b) the extent to which the organisation carries on activities of a medical, scientific, educational, cultural or artistic nature; and

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 67

Act No. 90/1995

- (c) the reputation of the organisation in relation to the screening of films; and
 - (d) the conditions as to admission of persons to the screening of films by the organisation.
- (3) An approval takes effect on the date of publication of the notice referred to in sub-section (1).
- (4) The Director may revoke an approval if, because of a change in any matter referred to in sub-section (2), he or she considers that it is no longer appropriate that the organisation be approved.
- (5) The Director must notify an organisation in writing of a decision—
- (a) to refuse an application for approval; or
 - (b) to revoke an approval—
- within 30 days after the date of the decision and must give reasons for the decision.
- (6) Revocation of an approval takes effect on the date of the decision to revoke or on a later date specified in the notice.

67. *Application by approved organisation for exemption*

- (1) An approved organisation may apply to the Director for an exemption under section 64.
- (2) An application must—
- (a) be in writing; and
 - (b) specify the film which the organisation intends to exhibit and the event at which the film is to be exhibited; and
 - (c) be accompanied by—
 - (i) a synopsis of the story or events depicted in the film; and
 - (ii) the prescribed fee.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995
Act No. 90/1995*

s. 67

- (3) The Director must notify an organisation in writing of a decision to refuse an application for an exemption within 30 days after the date of the decision and must give reasons for the decision.
-

PART 9—ENFORCEMENT

68. Interpretation

- (1) For the purposes of this Part, a thing is connected with a particular offence if—
 - (a) the offence has been committed with respect to it; or
 - (b) it will afford evidence of the commission of the offence; or
 - (c) it was used, or it is intended to be used, for the purpose of committing the offence.
- (2) In this Part, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing will be committed.
- (3) Where a member of the police force is authorised under this Part to enter a place, and enters that place, a reference in this Part to the occupier of the place includes a reference to a person whom the member believes on reasonable grounds to be the occupier, or to be in charge, of that place.

69. Entry, search and seizure

A member of the police force may enter any place, and may search for and seize anything that the member believes on reasonable grounds to be connected with an offence against this Act that is found on or in the place if the entry, search and seizure are made—

- (a) with the informed consent of the occupier of the place; or
- (b) in accordance with a warrant issued under section 71.

70. Informed consent

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 71

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- (1) An occupier of any place gives informed consent to a request to enter and search the place if he or she consents to the request after a member of the police force informs the occupier—
 - (a) of the purpose of the search; and
 - (b) that anything seized during the search may be used in evidence in court; and
 - (c) that the occupier may refuse to give consent to the entry and search.
 - (2) If an occupier consents to an entry and search, the member of the police force who requested consent must ask the occupier to sign an acknowledgment in the prescribed form stating—
 - (a) that the occupier has been informed of the purpose of the search and that anything seized during the search may be used in evidence in court; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search; and
 - (c) that the occupier has given such consent; and
 - (d) the date and time of the giving of such consent.
 - (3) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment immediately.
 - (4) If, in any proceeding, an acknowledgment is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to an entry and search.

71. Search warrant

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*
Act No. 90/1995

- (1) A member of the police force may apply to a magistrate for the issue of a search warrant in relation to a particular place if the member believes on reasonable grounds that there is or has been or will be a contravention of this Act on or in the place.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of a member of the police force that there are reasonable grounds for suspecting that there is, or may be within the next 28 days, a thing or things of a particular kind connected with an offence against this Act on or in a place, the magistrate may issue in accordance with the **Magistrates' Court Act 1989** a search warrant authorising a member named in the warrant—
 - (a) to enter the place specified in the warrant, if necessary by force; and
 - (b) to search for and seize a thing named or described in the warrant and which the member believes on reasonable grounds to be connected with the offence.
- (3) A search warrant issued under this section must state—
 - (a) the purpose for which the search is required and the nature of the offence suspected; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants

mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

72. *Announcement before entry*

- (1) On executing a search warrant, the member executing the warrant must announce that he or she is authorised by the warrant to enter the place and, if the member has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.
- (2) A member need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

73. *Details of warrant to be given to occupier*

If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the member of the police force must—

- (a) identify himself or herself to that person;
and
- (b) give to the person a copy of the warrant.

74. *Seizure of things not mentioned in warrant*

If, in the course of executing a search warrant, a member of the police force finds a thing that he or she believes on reasonable grounds to be—

- (a) connected with the offence although not the thing, or kind of thing, named or described in the warrant; or
- (b) connected with another offence against this Act—

and the member believes on reasonable grounds that it is necessary to seize that thing in order to

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 75

Act No. 90/1995

prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant is deemed to authorise the member to seize the thing.

75. Forfeiture

(1) If a person is charged with an offence in relation to—

- (a) a film classified RC or X; or
- (b) a publication or computer game classified RC; or
- (c) an objectionable film or objectionable publication—

and the court is satisfied that the person committed the offence, the court may order that the film, publication or computer game is forfeited to the Crown.

(2) If, despite the acquittal of a person charged with an offence referred to in sub-section (1), the court is satisfied that an offence has been committed in relation to the film, publication or computer game, the court may order that the film, publication or computer game is forfeited to the Crown.

(3) If—

- (a) a film classified RC or X; or
- (b) a publication or computer game classified RC; or
- (c) an objectionable film or objectionable publication—

has been lawfully seized by a member of the police force but at the expiration of 6 months after the seizure no person has been charged with an offence in relation to the seized item, the film,

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 75

publication or computer game is forfeited to the Crown.

- (4) The owner of a film, publication or computer game that has been lawfully seized by a member of the police force may apply within 28 days of the seizure to the Magistrates' Court for the return of the film, publication or computer game.
- (5) On an application under sub-section (4), if the Magistrates' Court is satisfied that the applicant is the owner of the film, publication or computer game, the Court must order that, at the expiration of 6 months after the seizure, the film, publication or computer game be returned to the applicant unless the applicant has been charged with an offence in relation to the film, publication or computer game.
- (6) Subject to sub-section (7), a film, publication or computer game which is forfeited under this section may be destroyed or otherwise dealt with as directed by the Minister.
- (7) The Minister must not direct the destruction of a film, publication or computer game before the expiration of the time allowed for instituting an appeal against the order or, if an appeal is lodged within that time, before the determination of the appeal.

PART 10—GENERAL

76. *Restricted publications area—construction and management*

- (1) A restricted publications area must be so constructed that no part of the interior of the area is visible to any person outside the area.
- (2) Each entrance to a restricted publications area—
 - (a) must be fitted with a gate or door capable of excluding persons from the area; and
 - (b) must be closed by means of that gate or door when the area is not open to the public.
- (3) A restricted publications area must be managed by an adult who must be in attendance in or near the area at all times when the area is open to the public.
- (4) The manager of a restricted publications area must cause a notice in the form in the Schedule, in legible letters not less than 15 millimetres in height and of a colour that contrasts with the background colour of the notice, to be displayed in a prominent place on or near each entrance to the area, so that it is clearly visible from outside the area.
- (5) If any of the requirements of this section are contravened, the owner of the business which occupies the restricted publications area is guilty of an offence punishable on conviction by a fine not exceeding 40 penalty units.

77. *Restricted publications area—offences*

- (1) The manager of a restricted publications area must not permit a minor to enter that area.

Penalty: 10 penalty units.

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- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove that the defendant believed on reasonable grounds that the minor was an adult.

78. Evidence

In any proceeding for an offence against this Act, a certificate signed or purporting to be signed by the Director or Deputy Director and stating that—

- (a) a film or publication or computer game is classified as specified in the certificate and, if the case requires, the determined markings for that type of classification are as specified in the certificate; or
- (b) a classified film or a classified computer game specified in the certificate is modified in a manner specified in the certificate; or
- (c) a film or publication or computer game is not classified, or is not classified at a classification specified in the certificate; or
- (d) an advertisement described in the certificate is approved or has been refused approval or has not been approved—

is evidence of, and in the absence of evidence to the contrary is proof of, the facts stated in it.

79. Commencement of prosecution for an offence

- (1) A prosecution for an offence against this Act in relation to a film, publication or computer game that is unclassified at the time of the alleged offence—
 - (a) must not be commenced until the film, publication or computer game has been classified; and
 - (b) unless the contrary intention appears, may be commenced not later than 12 months after

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 80

Act No. 90/1995

the date on which the film, publication or computer game was classified.

- (2) Sub-section (1)(a) does not apply if a person has been apprehended in accordance with section 458 of the **Crimes Act 1958**.

80. Proceeding against body corporate

- (1) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—
- (a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) the director, employee or agent had that state of mind.
- (2) If a director, employee or agent of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual or apparent authority, the body corporate must be taken, for the purposes of a prosecution for an offence against this Act, also to have engaged in the conduct unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) Unless the contrary intention appears, if a body corporate is found guilty of an offence against this Act, the court may impose a fine not exceeding 2 times the maximum amount which the court could otherwise impose in respect of the offence, to a maximum of 240 penalty units.

81. Employees and agents

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*
Act No. 90/1995

- (1) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show that—
 - (a) an employee or agent of the person had that state of mind; and
 - (b) the employee or agent engaged in the conduct within the scope of his or her actual or apparent authority.
- (2) If an employee or agent of a person other than a body corporate engages in conduct on behalf of the person within the scope of his or her actual or apparent authority, the person must be taken, for the purposes of a prosecution for an offence against this Act, also to have engaged in the conduct unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

82. *Costs*

If a person is charged with an offence against this Act and the court is satisfied that the person committed the offence, the court may order the person to pay by way of costs, in addition to any other costs, the amount of any fee incurred by the prosecution for classification or the provision of any certificate by the Director or Deputy Director.

83. *Publication to prescribed person or body*

Despite anything to the contrary in this Act, a person may publish to a prescribed person or a prescribed body, or to a person or body of a prescribed class or description of persons or bodies—

- (a) a film classified RC, X, R or MA; or
- (b) a computer game classified RC or MA (15+); or

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 84

Act No. 90/1995

- (c) a publication classified Category 1 restricted, Category 2 restricted or RC; or
- (d) a submittable publication.

84. Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

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

85. *Repeal*

The **Classification of Films and Publications Act 1990** is repealed.

86. *Consequential amendment*

In section 60B(2)(a)(iv) of the **Crimes Act 1958**, for "section 60A of the **Classification of Films and Publications Act 1990**" substitute "section 70".

87. *Transitional and saving provisions*

(1) In this section—

"former Act" means **Classification of Films and Publications Act 1990**;

"Ordinance" means Classification of Publications Ordinance 1983 of the Australian Capital Territory.

- (2) A film which is classified as a "G", "PG", "M", "MA" or "R" film or has been refused classification under the former Act before the commencement of this section is deemed to have been classified G, PG, M, MA or R or RC respectively under the Commonwealth Act.
- (3) A film which is classified as an "X" film under the Ordinance before the commencement of this section is deemed to have been classified X under the Commonwealth Act.
- (4) An advertisement relating to a film which has been approved or refused approval under the former Act before the commencement of this section is deemed to have been approved or refused approval, as the case may be, under the Commonwealth Act.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 87

Act No. 90/1995

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- (5) A publication which has been classified as an unrestricted publication or a Category 1 restricted publication or a Category 2 restricted publication or has been refused classification under the Ordinance before the commencement of this section is deemed to have been classified Unrestricted, Category 1 restricted or Category 2 restricted or RC respectively under the Commonwealth Act.
- (6) A computer game which has been classified under the Ordinance with a classification specified in column 1 of an item in the Table before the commencement of this section is deemed to have been classified under the Commonwealth Act with a classification specified opposite it in column 2 of that item.

TABLE

<i>Item</i>	<i>Column 1 Ordinance</i>	<i>Column 2 Commonwealth Act</i>
1	"G"	G
2	"G (8+)"	G (8+)
3	"M (15+)"	M (15+)
4	"MA (15+)"	MA (15+)

- (7) A computer game which has been refused, or is taken to have been refused, classification under the Ordinance before the commencement of this section is deemed to have been classified RC under the Commonwealth Act.
- (8) Nothing in this Act (except section 61) applies to or in relation to a computer game published before the date of commencement of this section unless the computer game has been classified or refused classification.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 87

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- (9) Advertising matter in relation to a computer game which has been approved or refused approval under the Ordinance before the commencement of this section is deemed to have been approved or refused approval under the Commonwealth Act.
 - (10) If on the commencement of this section an application for classification or approval under the former Act has been made but not determined, the application is deemed to have been made under the Commonwealth Act.
 - (11) If an application for review under the former Act has been made but not determined, the former Act continues to apply until the determination of the application, including any further review of a previous decision.
 - (12) If a certificate of exemption in respect of an unclassified film has been granted under section 29A of the former Act and is in force, the certificate is deemed to have been granted under section 33 of the Commonwealth Act.
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*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 88

Act No. 90/1995

PART 12—AMENDMENT OF THE CRIMES ACT

No. 6231.
Reprinted to
No. 43/1994
and S.R. No.
75/1987 and
subsequently
amended by
Nos 95/1994,
102/1994,
109/1994 and
48/1995.

88. Insertion of new Subdivision 13

In Division 1 of Part I of the **Crimes Act 1958**
after section 67 **insert—**

'(13) Child Pornography

67A. Definitions

In this Subdivision—

"child pornography" means a film,
photograph, publication or computer
game that describes or depicts a person
who is, or looks like, a minor under
16 engaging in sexual activity or
depicted in an indecent sexual manner
or context;

"classified" means classified under the
Commonwealth Act;

"Commonwealth Act" means the
Classification (Publications, Films and
Computer Games) Act 1995 of the
Commonwealth;

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

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

"law enforcement agency" means—

- (a) the police force of Victoria or of
any other State or of the Northern
Territory of Australia; or
- (b) the Australian Federal Police; or

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 88

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- (c) the National Crime Authority established by the National Crime Authority Act 1984 of the Commonwealth; or
 - (d) any other authority or person responsible for the enforcement of the laws of—
 - (i) Victoria or any other State; or
 - (ii) the Commonwealth; or
 - (iii) the Northern Territory of Australia;

"minor" means a person under the age of 18 years;

"photograph" includes a photocopy or other reproduction of a photograph;

"publication" has the same meaning as in the Commonwealth Act.

68. *Production of child pornography*

A person who prints or otherwise makes or produces child pornography is guilty of a summary offence punishable on conviction by level 9 imprisonment.

69. *Procurement of minor for child pornography*

A person who—

- (a) invites a minor to be in any way concerned in the making or production of child pornography; or

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

s. 88

Act No. 90/1995

(b) procures a minor for the purpose of making or producing child pornography—

is guilty of an indictable offence punishable on conviction by level 7 imprisonment.

70. Possession of child pornography

(1) A person who knowingly possesses child pornography is guilty of a summary offence punishable on conviction by level 10 imprisonment.

(2) It is a defence to a prosecution for an offence against sub-section (1) to prove—

(a) in the case of—

(i) a film; or

(ii) a photograph contained in a publication; or

(iii) a computer game—

that at the time of the alleged offence the film, publication or computer game was classified other than RC or X; or

(b) that the film, photograph, publication or computer game possesses artistic merit or is for a genuine medical, legal, scientific or educational purpose; or

(c) that the defendant believed on reasonable grounds that the minor was aged 16 years or older or that he or she was married to the minor; or

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

s. 88

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- (d) that the defendant made the film or took the photograph or was given the film or photograph by the minor and that, at the time of making, taking or being given the film or photograph, the defendant was not more than 2 years older than the minor was or appeared to be; or
- (e) that the minor or one of the minors depicted in the film or photograph is the defendant.
- (3) Despite sub-section (2)(b), the defence of artistic merit cannot be relied on in a case where the prosecution proves that the minor was actually under the age of 16 years.
- (4) Nothing in this section makes it an offence for any member or officer of a law enforcement agency to have child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on him or her by or under this or any other Act or at common law.'
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*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995
Act No. 90/1995*

Sch.

SCHEDULE

Section 76(4)

RESTRICTED PUBLICATIONS AREA

**PERSONS UNDER 18 YEARS OF AGE
MAY NOT ENTER**

**THE PUBLIC IS WARNED THAT SOME
MATERIAL DISPLAYED IN THIS
AREA MAY CAUSE OFFENCE.**

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995*

Act No. 90/1995

Notes

NOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 1 November 1995

Legislative Council: 16 November 1995

The long title for the Bill for this Act was "A Bill to provide for the enforcement of a scheme of classification of publications, films and computer games and for other purposes."

The **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** was assented to on 5 December 1995 and came into operation as follows:

Ss. 1 to 5 on 5 December 1995: s.2(1);

Rest of Act on 1 January 1996: Government Gazette 21 December 1995 p. 3570.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995
Act No. 90/1995*

Notes

2. Table of Amendments

There are no amendments made to the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** by Acts and subordinate instruments.

*Classification (Publications, Films and Computer Games)
(Enforcement) Act 1995
Act No. 90/1995*

Notes

3. Explanatory Details

No entries at date of publication.