

Queensland



# CLASSIFICATION OF PUBLICATIONS ACT 1991

**Reprinted as in force on 9 December 1992  
(Act not amended up to this date)**

**Reprint No. 1**

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the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This Act is reprinted as at 9 December 1992. The opportunity has been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use conjunctives and disjunctives consistent with current legislative drafting practice as permitted by section 28 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by section 40 of that Act.

**Also see Endnotes for—**

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

# Queensland



## CLASSIFICATION OF PUBLICATIONS ACT 1991

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# CLASSIFICATION OF PUBLICATIONS ACT 1991

[reprinted as in force on 9 December 1992<sup>2</sup>]

**An Act relating to the classification of publications, and for related purposes**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Classification of Publications Act 1991*<sup>3-4</sup>.

### Commencement

2. This Act commences on a day to be fixed by proclamation.

### Interpretation

3. In this Act—

“**approved wholesaler**” means a wholesaler of publications who is an approved distributor;

“**category 1 restricted publication**” means a publication that is classified as a category 1 restricted publication;

“**category 2 restricted publication**” means a publication that is classified as a category 2 restricted publication;

“**child abuse publication**” means a refused classification publication that depicts or describes in pictorial or other form a minor (whether or not engaged in sexual activity) who is, or is apparently, under the age of 16

years in a way that is likely to cause offence to a reasonable adult person;

**“classified”** means classified under this Act or the Ordinance;

**“code of conduct”** means a code of conduct that is approved under section 7;

**“interim prohibited publication”** means a publication that is classified as an interim prohibited publication under section 9;

**“occupier”**, in relation to a place, includes a person in charge of the place;

**“Ordinance”** means the *Classification of Publications Ordinance 1983* of the Australian Capital Territory;

**“place”** includes—

- (a) vacant land or premises; and
- (b) a vehicle, vessel or aircraft;

**“possession”**, in relation to a publication, includes—

- (a) custody or control of the publication; and
- (b) an ability or right to obtain custody or control of the publication;

**“premises”** includes—

- (a) a building or structure, or a part of a building or structure, of any kind; and
- (b) the land on which a building or structure is situated; and
- (c) a vehicle, vessel or aircraft;

**“prohibited publication”** means a publication that—

- (a) is a restricted publication; or
- (b) is a refused classification publication; or
- (c) is an interim prohibited publication;

**“public place”** means any place that—

- (a) the public is entitled to use; or
- (b) is open to, or used by, the public (whether or not on payment of money);

**“publication”** means a book, paper, magazine or other written or pictorial matter;

**“publish”** includes sell, exhibit, display and distribute;

**“refused classification publication”** means a publication that is or would be refused classification;

**“restricted publication”** means a publication that is, or, if classified, would be, a category 1 restricted publication or category 2 restricted publication;

**“retail seller”** means a person who sells, in the ordinary course of business, publications supplied by an approved wholesaler;

**“sell”** means sell, exchange or let on hire, and includes offer for sale or hire, agree to sell or hire and cause or permit to be sold or hired;

**“unrestricted publication”** means a publication that is, or, if classified, would be, classified as an unrestricted publication.

### **Classification under Ordinance**

**4.(1)** If a classification of a publication has not been made under this Act and a classification of that publication is made under the Ordinance, the classification of the publication made under the Ordinance has effect for the purposes of this Act.

**(2)** If—

- (a) a classification of a publication made under this Act is in force; and
- (b) a different classification of the publication is subsequently made under the Ordinance;

the latter classification does not have effect for the purposes of this Act.

### **Inspectors**

**5.(1)** For the purposes of this Act, the chief executive of the department may appoint, in writing, officers of the department, or, with the agreement of the Commissioner of Police, police officers, to be inspectors.

(2) The chief executive may issue an identity card to an inspector who is not a police officer.

(3) The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be in a form approved by the chief executive.

(4) A person who ceases to be an inspector must, as soon as practicable, return his or her identity card to the chief executive.

Maximum penalty for contravention of this subsection— 5 penalty units.

### **Publications classification officer**

6.(1) There is to be a publications classification officer.

(2) The publications classification officer is to be an officer of the department.

### **Approval of codes of conduct**

7. Codes of conduct developed between the publications classification officer and distributors, sellers or other persons involved in the business of selling (whether by wholesale or retail) or distributing publications may be approved by order in council.

### **Approved distributors**

8.(1) The publications classification officer must approve a distributor if—

- (a) the distributor undertakes to comply with all relevant codes of conduct; and
- (b) the publications classification officer is satisfied that the distributor is a genuine distributor, is a fit and proper person and is capable of complying with the codes.

(2) The publications classification officer must publish particulars of an approval under subsection (1) by Gazette notice and any other prescribed means of publication.



(3) If the publications classification officer refuses to approve a person as distributor, the publications classification officer must give written notice of the refusal to the person within 14 days of the refusal and must state in the notice the reasons for the refusal.

(4) The approval of an approved distributor may be revoked by written notice given to the distributor if the publications classification officer is satisfied that the distributor—

- (a) is not complying, or is not able to comply, with all relevant codes of conduct; or
- (b) has ceased to be a distributor; or
- (c) has ceased to be a fit and proper person.

(5) The publications classification officer must publish particulars of a revocation of approval under subsection (4) by Gazette notice and any other prescribed means of publication.

(6) A person to whom notice is given under subsection (3) or (4) may, within 28 days after receipt of the notice, appeal to the Magistrates Court exercising jurisdiction at or nearest to the place where the person carries on, or proposes to carry on, business as a distributor.

(7) The appeal must be instituted by—

- (a) lodging written notice of appeal with the Clerk of the relevant Magistrates Court; and
- (b) serving a copy of the notice on the publications classification officer.

(8) The notice of appeal must specify the grounds of appeal and the facts relied on.

(9) Rules of Court made under the *Magistrates Courts Act 1921* apply, with all necessary modifications, with respect to the institution, conduct and determination of the appeal.

(10) The publications classification officer is a party to the appeal.

(11) If—

- (a) the publications classification officer has revoked the approval of a distributor; and
- (b) the distributor has appealed under this section to a Magistrates

Court;

a Magistrate may, on application made by the distributor, suspend the revocation for such period as the Magistrate determines.

(12) A suspension of revocation lapses on the withdrawal or final determination of the appeal.

## **PART 2—CLASSIFICATION OF PUBLICATIONS**

### **Classification of publications**

**9.(1)** If a classification of a publication is not in force under this Act, the publications classification officer may, on his or her own initiative or on the complaint of a person, classify a publication as—

- (a) an unrestricted publication; or
- (b) a category 1 restricted publication; or
- (c) a category 2 restricted publication; or
- (d) a refused classification publication.

(2) The publications classification officer is to make a classification under subsection (1) applying the relevant provisions of the Ordinance as if they were provisions of this Act.

(3) The publications classification officer may, without making a classification under subsection (1), classify a publication as an interim prohibited publication.

(4) The publications classification officer must not classify a publication as an interim prohibited publication unless the publications classification officer is of the opinion that the publication is either a restricted publication or a refused classification publication.

(5) A classification under this section is effective immediately.

### **Reclassification of publications**

**10.** If the publications classification officer is satisfied that a publication

that has been classified under this Act should have a different classification, the publications classification officer may set the classification aside and reclassify the publication under section 9.

### **Appeal against classification by publications classification officer**

**11.(1)** If the publications classification officer makes a decision classifying a publication, a person whose interests are adversely affected by the decision may, within 28 days after the person becomes aware of the classification, appeal to the appeal body.

**(2)** The appeal must be instituted by giving written notice of appeal to the publications classification officer.

**(3)** The notice of appeal must specify fully the grounds of appeal and the facts relied on.

**(4)** The publications classification officer must refer the appeal to the appeal body.

**(5)** The appeal body must—

- (a) affirm the classification; or
- (b) revoke the classification and substitute an alternative classification.

**(6)** For the purposes of the appeal, the appeal body may exercise all the powers and discretions conferred on the publications classification officer.

## **PART 3—OFFENCES**

### **Sale etc. of prohibited publication**

**12.** A person must not advertise, sell or distribute, or attempt to advertise, sell or distribute, a prohibited publication.

Maximum penalty—

- (a) in the case of a restricted publication—50 penalty units or imprisonment for 3 months; or

- (b) in the case of a refused classification publication (other than a child abuse publication)—300 penalty units or imprisonment for 1 year; or
- (c) in the case of a child abuse publication—600 penalty units or imprisonment for 2 years.

**Possession of prohibited publication**

**13.** A person must not have possession of a prohibited publication for the purpose of publishing it.

Maximum penalty—

- (a) in the case of a restricted publication—50 penalty units or imprisonment for 3 months; or
- (b) in the case of a refused classification publication (other than a child abuse publication)—300 penalty units or imprisonment for 1 year; or
- (c) in the case of a child abuse publication—600 penalty units or imprisonment for 2 years.

**Possession of child abuse publication**

**14.** A person must not have possession of a publication knowing that it is a child abuse publication.

Maximum penalty—300 penalty units or imprisonment for 1 year.

**Exhibition or display of prohibited publication**

**15.** A person must not exhibit or display, or attempt to exhibit or display, a prohibited publication—

- (a) in a public place; or
- (b) in such a way that it is visible to persons in or on a public place.

Maximum penalty—

- (a) in the case of a restricted publication—50 penalty units or imprisonment for 3 months; or

- (b) in the case of a refused classification publication (other than a child abuse publication)—300 penalty units or imprisonment for 1 year; or
- (c) in the case of a child abuse publication—600 penalty units or imprisonment for 2 years.

### **Leaving prohibited publication in or on public place**

**16.** A person must not leave, or attempt to leave, a prohibited publication in or on a public place with intent to cause offence to another person or with reckless disregard to the offence that could be caused to another person.

Maximum penalty—

- (a) in the case of a restricted publication—50 penalty units or imprisonment for 3 months; or
- (b) in the case of a refused classification publication (other than a child abuse publication)—300 penalty units or imprisonment for 1 year; or
- (c) in the case of a child abuse publication—600 penalty units or imprisonment for 2 years.

### **Producing prohibited publication**

**17.(1)** A person must not print or otherwise make or produce, or attempt to print or otherwise make or produce, a prohibited publication for the purpose of publishing it.

Maximum penalty—

- (a) in the case of a restricted publication—50 penalty units or imprisonment for 3 months; or
- (b) in the case of a refused classification publication (other than a child abuse publication)—300 penalty units or imprisonment for 1 year; or
- (c) in the case of a child abuse publication—800 penalty units or imprisonment for 3 years.

**(2)** A person must not copy, or attempt to copy, a prohibited publication

for the purpose of publishing it.

Maximum penalty—

- (a) in the case of a restricted publication—50 penalty units or imprisonment for 3 months; or
- (b) in the case of a refused classification publication (other than a child abuse publication)—300 penalty units or imprisonment for 1 year; or
- (c) in the case of a child abuse publication—800 penalty units or imprisonment for 3 years.

**(3)** A person must not print or otherwise make or produce, or attempt to print or otherwise make or produce, a child abuse publication.

Maximum penalty—800 penalty units or imprisonment for 3 years.

**(4)** A person must not copy, or attempt to copy, a child abuse publication.

Maximum penalty—800 penalty units or imprisonment for 3 years.

### **Procurement of minor for refused classification publication**

**18.** A person must not procure, or attempt to procure, a minor to be in any way concerned in the making or production of a refused classification publication.

Maximum penalty—

- (a) in the case of a child abuse publication—1000 penalty units or imprisonment for 5 years; or
- (b) in any other case—800 penalty units or imprisonment for 3 years.

### **Distributors, retail sellers and advertisers not liable in certain circumstances**

**19.(1)** A retail seller is not guilty of an offence against section 12, 13 or 15 in relation to a prohibited publication that was supplied by an approved wholesaler, or by a person whom the retail seller believed on reasonable grounds was an approved wholesaler, if—

- (a) at the time of the alleged offence, the publication is not classified;

or

(b) at the time of the alleged offence—

(i) the publication is classified; and

(ii) the retail seller does not know that the publication is a prohibited publication.

(2) An approved wholesaler is not guilty of an offence against section 12 or 13 in relation to a prohibited publication if—

(a) at the time of the alleged offence, the publication is not classified;  
or

(b) at the time of the alleged offence—

(i) the publication is classified; and

(ii) the distributor does not know that the publication is a prohibited publication.

(3) A person who advertises a publication is not guilty of an offence against section 12 if the person does not know, and has no reason to suspect, that the publication is a prohibited publication.

### **Leaving prohibited publication in or on private premises**

**20.** A person must not knowingly or recklessly leave, or attempt to leave, a prohibited publication in or on private premises without the occupier's permission.

Maximum penalty—

(a) in the case of a restricted publication—25 penalty units or imprisonment for 1 month; or

(b) in the case of a refused classification publication (other than a child abuse publication)—150 penalty units or imprisonment for 6 months; or

(c) in the case of a child abuse publication—300 penalty units or imprisonment for 1 year.

## **PART 4—INVESTIGATION AND ENFORCEMENT**

### **Inspector to produce identity card**

**21.** An inspector who is not a police officer is not entitled to exercise powers under this Part in relation to another person unless the inspector first produces the inspector's identity card for inspection by the person.

### **Entry and search—monitoring compliance**

**22.(1)** Subject to subsection (2), an inspector may, for the purpose of finding out whether the requirements of this Act are being complied with—

- (a) enter or board any place; and
- (b) exercise the powers set out in section 24.

**(2)** An inspector must not enter or board a place, or exercise a power under subsection (1), unless—

- (a) the occupier of the place (if any) consents to the entry or boarding or exercise of the power; or
- (b) a warrant under section 25 authorises the entry or exercise of the power; or
- (c) the place is premises, or that part of premises, to which the public are admitted (whether or not for consideration) and the entry is made when members of the public attend or the premises are open for admission by the public.

**(3)** An inspector who is permitted by this section to enter or board a vehicle, vessel or aircraft may, for the purpose of effecting the entry or boarding and for the purpose of exercising any powers that the inspector is permitted to exercise, stop and detain the vehicle, vessel or aircraft.

### **Entry and search—evidence of offences**

**23.(1)** Subject to subsection (3), if an inspector has reasonable grounds for suspecting that there is in or on a place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Act, the inspector may—



- (a) enter or board the place; and
- (b) exercise the powers set out in section 24.

**(2)** If an inspector enters or boards the place and finds the evidence, the following provisions have effect—

- (a) the inspector may seize the evidence;
- (b) the inspector may keep the evidence for 60 days or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings;
- (c) if the evidence is a document—while the inspector has possession of the document, the inspector may take extracts from and make copies of the document but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector's possession.

**(3)** An inspector must not enter or board the place or exercise a power under subsection (1) unless—

- (a) the occupier (if any) of the place consents to the entry or boarding or exercise of the power; or
- (b) a warrant under section 26 that was issued in relation to the evidence authorises the entry or boarding or exercise of the power.

**(4)** If in the course of searching the place under subsection (1) under a warrant under section 26, an inspector—

- (a) finds a thing that the inspector believes, on reasonable grounds to be—
  - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
  - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
- (b) the inspector believes, on reasonable grounds, that it is necessary

to seize the thing to prevent—

- (i) its concealment, loss or destruction; or
- (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1), or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

### **General powers of inspector in relation to places**

**24.(1)** The powers an inspector may exercise under section 22(1)(b) or 23(1)(b) in relation to a place are as follows—

- (a) to search any part of the place;
- (b) to inspect or examine anything in or on the place;
- (c) to take extracts from, and make copies of, any documents in or on the place;
- (d) to take into or onto the place such equipment and materials as the inspector requires for the purpose of exercising any powers in relation to the place;
- (e) to require the occupier or any person in or on the place to give to the inspector reasonable assistance in relation to the exercise of the inspector's powers mentioned in paragraphs (a) to (d).

**(2)** A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1)(e).

Maximum penalty—10 penalty units.

**(3)** It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question, or producing the document, might tend to incriminate the person.

### **Monitoring warrants**

**25.(1)** An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place (other than a dwelling or that part of premises used as a dwelling).

**(2)** Subject to subsection (3), the Magistrate may issue the warrant if the

Magistrate is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the place for the purpose of finding out whether the requirements of this Act are being complied with.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the inspector or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—
  - (i) to enter the place; and
  - (ii) to exercise the powers set out in section 24; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

### **Offence related warrants**

**26.(1)** An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in or on the place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Act.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the inspector or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—
  - (i) to enter the place; and
  - (ii) to exercise the powers set out in section 24; and
  - (iii) to seize the evidence; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purposes for which the warrant is issued.

### **Offence related warrant may be granted by telephone**

**27.(1)** If, because of circumstances of urgency, an inspector considers it necessary to do so, the inspector may, under this section, apply by telephone for a warrant under section 26.

**(2)** Before applying for the warrant, the inspector must prepare an information of the kind mentioned in section 26(2) that sets out the grounds on which the issue of the warrant is sought.

**(3)** If it is necessary to do so, an inspector may apply for the warrant before the information has been sworn.

**(4)** If the Magistrate is satisfied—

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 26, complete and sign such warrant as the Magistrate would issue under that section if the application had been made under that section.

**(5)** If the Magistrate completes and signs the warrant—

- (a) the Magistrate must—

- (i) tell the inspector what the terms of the warrant are; and
  - (ii) tell the inspector the day on which and the time at which the warrant was signed; and
  - (iii) record on the warrant the reasons for granting the warrant; and
- (b) the inspector must—
- (i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and
  - (ii) write on the form of warrant the name of the Magistrate and the day on which and the time at which the Magistrate signed the warrant.

**(6)** The inspector must also, not later than the day after the day of expiry or execution of the warrant (whichever is the earlier), send to the Magistrate—

- (a) the form of warrant completed by the inspector; and
- (b) the information mentioned in subsection (2), which must have been duly sworn.

**(7)** When the Magistrate receives the documents mentioned in subsection (6), the Magistrate must—

- (a) attach them to the warrant that the Magistrate completed and signed; and
- (b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 26.

**(8)** A form of warrant duly completed by the inspector under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the Magistrate authorises.

**(9)** If—

- (a) it is material, in a proceeding, for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and
- (b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

### **Additional power of inspector to seize publications**

**28.(1)** If—

- (a) a complaint is made to the publications classification officer about a publication; and
- (b) the publications classification officer reasonably believes that the publication is a prohibited publication;

the publications classification officer may direct an inspector to seize the publication from any place that the inspector may lawfully enter or board.

**(2)** The inspector may seize the publication from any such place.

**(3)** An inspector who seizes a publication under subsection (2) must, as soon as practicable, submit the publication to the publications classification officer for classification.

**(4)** If a publication seized under subsection (2) is classified as an unrestricted publication, the inspector must immediately return the publication.

### **Inspector may require name and address**

**29.(1)** An inspector who—

- (a) finds a person committing, or finds a person that the inspector reasonably suspects of having committed, an offence against this Act; or
- (b) is making inquiries or investigations with a view to establishing whether or not an offence against this Act has been committed by a person; or

(c) is reasonably of the opinion that the name and address of a person is required for the purpose of—

- (i) giving effect to a provision of this Act; or
- (ii) enabling the inspector to carry out the inspector's functions under this Act;

may require the person to state the person's name and address and, if the inspector has reasonable grounds to believe that the name or address given is false, may require evidence of its correctness.

(2) A person who is required under subsection (1) to state the person's name or address must not—

- (a) fail to comply with the requirement; or
- (b) state a false name or address.

Maximum penalty—50 penalty units.

(3) A person who is required under subsection (1) to give evidence of the correctness of a name or address must not fail to give the evidence or give false evidence.

Maximum penalty—50 penalty units.

### **Obstruction etc. of inspectors**

30. A person must not, without reasonable excuse, obstruct, hinder or resist an inspector in the exercise of a power under this Act.

Maximum penalty—50 penalty units.

### **False or misleading statements**

31. A person must not—

- (a) make a statement to an inspector that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an inspector any matter or thing without which the statement is, to the knowledge of the person, misleading in a material particular; or
- (c) give to an inspector a document containing information that the person knows is false, misleading or incomplete in a material particular without—
  - (i) indicating to the inspector that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
  - (ii) providing correct information to the inspector if the person

has, or can reasonably obtain, the correct information.

Maximum penalty—50 penalty units.

## **PART 5—MISCELLANEOUS**

### **Evidentiary provisions**

**32.(1)** In a proceeding for an offence against this Act, a certificate signed or purporting to be signed by the publications classification officer stating that—

- (a) a specified publication has been classified (and specifying the classification) or refused classification; or
- (b) a specified publication has not been classified; or
- (c) a specified publication is a prohibited publication;

is on its production in the proceeding evidence of the matters stated in the certificate.

**(2)** In a proceeding for an offence against this Act, it is not necessary to prove the authority of the complainant to institute the proceeding.

### **Indictable offences and summary offences**

**33.(1)** An offence—

- (a) against section 18 (Procurement of minor for refused classification publication); or
- (b) against another provision of this Act involving a child abuse publication;

is punishable on indictment.

**(2)** Any other offence against this Act is punishable summarily.

**(3)** An indictable offence against this Act may, at the election of the defendant, be heard and determined summarily.

**(4)** A complaint under the *Justices Act 1886* for a summary offence



against this Act may be made only by—

- (a) the publications classification officer; or
- (b) a person authorised in writing by the Minister.

### **Forfeiture**

**34.(1)** If a person is convicted of an offence against this Act that relates to a prohibited publication, the court by or before which the person is convicted may, in addition to imposing any penalty, order that the publication or anything used in connection with the commission of the offence be forfeited.

**(2)** A publication or thing that is forfeited under subsection (1) may be destroyed or otherwise dealt with as directed by the Minister.

### **Return of seized publications**

**35.(1)** An inspector who seizes a publication must, unless otherwise ordered by a court, return the publication to the person who is entitled to possession of it if—

- (a) it is not required as evidence in a proceeding for an offence against this or any other Act; and
- (b) all proceedings (if any) instituted for an offence in relation to the publication are finally determined (whether or not on appeal) and no person has been convicted of an offence against this or any other Act in relation to the publication.

**(2)** Subsection (1) does not apply to a child abuse publication.

### **Unrestricted publication not indecent or obscene**

**36.** An unrestricted publication is not an indecent or obscene publication for the purposes of the Criminal Code or the *Vagrants, Gaming and Other Offences Act 1931*.

### **Exemptions**

**37.(1)** The publications classification officer may, in writing, on the

written application of a person or body, exempt the person or body from this Act, or specified provisions of this Act, in relation to specified publications, subject to specified conditions (if any).

(2) An exemption may only be given under subsection (1) in relation to publications of a medical, educational or scientific character.

(3) For so long as an exemption under subsection (1) remains in force and all conditions (if any) specified in it are complied with—

- (a) this Act, or the provisions of this Act specified in the exemption, do not apply to the person or body, and the publications, in relation to which the exemption was given; and
- (b) the publications are not indecent or obscene publications for the purposes of the Criminal Code and the *Vagrants, Gaming and Other Offences Act 1931*.

(4) The publications classification officer may revoke an exemption given under subsection (1) if the person or body to whom it is given fails to comply with a condition to which the exemption is subject.

(5) If an application made by a person or body under subsection (1) is not accepted (in whole or part) or an exemption is revoked under subsection (4)—

- (a) the publications classification officer must notify the person or body in writing of the decision and of the reasons for the decision; and
- (b) the person or body may, within 28 days after being notified of the decision, appeal to the appeal body against the decision.

(6) The appeal must be instituted by giving written notice of appeal to the publications classification officer.

(7) The notice of an appeal must specify fully the grounds of appeal and the facts relied on.

(8) The publications classification officer must refer the appeal to the appeal body.

(9) The appeal body must—

- (a) affirm the decision appealed against; or
- (b) vary the decision appealed against; or

- (c) set the decision appealed against aside and make a decision in substitution for the decision set aside.

(10) For the purposes of the appeal, the appeal body may exercise all the powers and discretions conferred on the publications classification officer.

## **Regulations**

**38.(1)** The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may prescribe maximum penalties of fines of not more than 20 penalty units for offences against a regulation.

(3) A regulation may make provision with respect to the constitution, practice and procedure of the appeal body (which may be the holder of an office), including provision in relation to the making of arrangements between the State and the Commonwealth with respect to the constitution of the appeal body.

## **PART 6—REPEALS, SAVINGS AND TRANSITIONAL**

### **Savings and transitional**

**40.(1)** Literature forfeited or retained under the *Objectionable Literature Act 1954*, and not destroyed or otherwise disposed of in accordance with that Act at the commencement of this section, is to be retained, destroyed or otherwise disposed of as the Minister directs.

(2) The destruction, retention or disposal of literature under subsection (1) does not confer a right to compensation.

## ENDNOTES

### 1 Index to Endnotes

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### 2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. However, no amendments have commenced operation before that day. Future amendments of the *Classifications of Publications Act 1991* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

### 3 List of legislation

#### **Classification of Publications Act 1991 No. 78**

date of assent 9 December 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 27 November 1992 (1992 SL No. 374)

## 4 List of annotations

### Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Chap	=	Chapter
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
prev	=	previous
pres	=	present

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

### Repeal of Acts

s 39 om (see s 40 RA)