

Queensland



# CLASSIFICATION OF PUBLICATIONS ACT 1991

**Reprinted as in force on 3 July 1998  
(includes amendments up to Act No. 82 of 1997)**

**Reprint No. 3**

This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This Act is reprinted as at 3 July 1998. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- correct minor errors (s 44).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint, including table of corrected minor errors**
- **editorial changes made in earlier reprints.**

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# CLASSIFICATION OF PUBLICATIONS ACT 1991

[as amended by all amendments that commenced on or before 3 July 1998]

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

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Classification of Publications Act 1991*.

### Commencement

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

### Definitions

3. In this Act—

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

“**board**” means the Classification Board established under the Commonwealth Act.<sup>1</sup>

“**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.

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<sup>1</sup> See the Commonwealth Act, section 45 (Establishment of Classification Board).

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**“child abuse photograph”** means a photograph or any other image or material (however produced or reproduced) that—

- (a) depicts or describes in pictorial or other form a person who is, or who looks like, a child under 16 years (whether the person is engaged in sexual activity or not) in a way that is likely to cause offence to a reasonable adult person; and
- (b) is not part of a publication.

**“child abuse publication”** means an RC publication that depicts or describes in pictorial or other form a person who is, or who looks like, a child under 16 years (whether the person is engaged in sexual activity or not) in a way that is likely to cause offence to a reasonable adult person.

**“classification guidelines”** means the guidelines published under the Commonwealth Act,<sup>2</sup> to the extent they relate to publications.

**“classified”** means classified under this Act or the Commonwealth Act.

**“Code”** means the National Classification Code under the Commonwealth Act.

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

**“Commonwealth Act”** means the *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth).

**“determined markings”**, for a publication, means the markings for the publication determined under the Commonwealth Act.<sup>3</sup>

**“director”** means the director of the board.

**“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.

**“place”** includes—

- (a) vacant land or premises; and

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<sup>2</sup> See the Commonwealth Act, section 12 (Classification guidelines).

<sup>3</sup> See the Commonwealth Act, section 8 (Markings for classifications).



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(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 an RC publication; or
- (c) is an interim prohibited publication.

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

**“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).

**“publish”** includes sell, exhibit, display, demonstrate and distribute.

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

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

**“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—

- (a) offer, invite to treat or expose for sale or hire; and
- (b) agree to sell or hire; and

(c) cause or permit to be sold or hired.

**“submittable publication”** means an unclassified publication that, having regard to the Code and the classification guidelines, contains depictions or descriptions of sexual matters, drugs, nudity or violence that are likely to offend a reasonable adult to the extent that the publication should not be sold as an unrestricted publication.

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

### **Classification under Commonwealth Act**

**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 Commonwealth Act, the classification of the publication made under the Commonwealth Act 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 Commonwealth Act;

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 the police service, 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.

### **Delegation by publications classification officer**

**6A.** The publications classification officer may, with the written approval of the chief executive of the department, delegate the officer's powers under this Act to another 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 regulation.

### **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

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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) unrestricted; or
- (b) category 1 restricted; or
- (c) category 2 restricted; or
- (d) RC.

(2) The publications classification officer is to make a classification under subsection (1) applying the relevant provisions of the Commonwealth Act 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 an RC publication.

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

### **Director's power to require publisher to submit application for classification of a publication**

**9A.(1)** If—

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- (a) the director reasonably believes a publication is a submittable publication; and
- (b) it is being published in the State, or the director reasonably believes it will be published in the State;

the director may, by written notice given to its publisher, require the publisher to submit an application for classification of the publication, or its subsequent issues, by the board.

(2) The director must cause notice of a decision under subsection (1) to be published in the Commonwealth gazette.

(3) A person to whom a notice under this section is given must comply with the notice within 3 business days after receiving it.

Maximum penalty—20 penalty units.

### **Director's power to require certain advertisements to be submitted for approval**

**9B.(1)** The director may, by written notice given to the publisher of a publication that—

- (a) the director reasonably believes is a submittable publication; and
- (b) is being published in Queensland, or the director reasonably believes will be published in Queensland;

require the publisher to submit to the board for approval a copy of each advertisement used or intended to be used in connection with the publication.

(2) A person to whom a notice under this section is given must comply with the notice within 3 business days after receiving it.

Maximum penalty—20 penalty units.

### **Defence to prosecution under section 9A or 9B**

**9C.** In relation to a publication the director reasonably believes is a submittable publication that will be published in Queensland, it is a defence to a prosecution for an offence under section 9A or 9B for the defendant to

prove that the defendant did not intend to publish, or authorise or cause someone else to publish, the publication in Queensland.

### **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 2A—PROTECTION OF CHILDREN AND FAMILIES BY CONDITIONS FOR DISPLAYING CERTAIN UNRESTRICTED PUBLICATIONS**

### **Definitions for pt 2A**

**11A.** In this part—

“**cover**”, of a publication, includes a box, label, covering or other packaging for the publication.

“**depiction**” includes description, expression or other dealing with.

“**inappropriate matter**” means a matter of sex (including sexuality of the body), drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena.

“**officer**” means the publications classification officer.

### **Protection of children and families by order prohibiting display of unrestricted publication unless certain parts of its cover are concealed**

**11B.(1)** The officer may, by gazette notice, make an order (a “**display order**”) prohibiting the display of a specified unrestricted publication for sale at any public place to which children have access unless—

- (a) the rack or other thing that may be holding the publication is at least 1.5 m above the floor or ground, as the case may be; or
- (b) the pictures, drawings and other images on the publication’s cover are concealed by the rack or other thing that may be holding the publication; or
- (c) the pictures, drawings and other images on the publication’s cover are concealed by a cover; or
- (d) the pictures, drawings and other images on the publication’s cover can not be seen without being handled.

**(2)** A display order may only be made if the officer is satisfied the order is necessary to protect children or families.

**(3)** In deciding whether to make a display order, the officer must assume that, generally, it is not in the best interests of children and families to



display a publication's cover to children without proper adult supervision if the cover contains—

- (a) a gratuitous depiction of inappropriate matter; or
- (b) inappropriate matter on which there is an undue emphasis or undue focus.

(4) Also, in deciding whether to make a display order, the officer must take into account any submission received under subsection (5).

(5) If the officer proposes to make a display order, the officer must, if practicable, notify the publication's publisher—

- (a) that the officer proposes to make a display order; and
- (b) which issue of the publication it is proposed to specify in the order; and
- (c) that the publisher may make a submission about the proposal in writing, but not by mail; and
- (d) a number to which a submission may be faxed; and
- (e) an address at which a submission may be lodged; and
- (f) the closing time for receiving a submission.

(6) A display order may be made on the complaint of a person or on the officer's own initiative.

(7) A display order is not subordinate legislation.

### **Publications for which display order may be made**

**11C.(1)** A display order may be made for an existing or future publication.

(2) However, a display order may only be made for a future publication if the officer is also satisfied that, at some time within the previous 2 years, another publication has been available for sale, as a new publication, at a public place and—

- (a) the other publication—
  - (i) had the same name as the future publication; or
  - (ii) traded on the goodwill attaching to the name of the future

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- publication (whether or not it had a similar name); and
- (b) a display order is being made, or could be made if necessary, for the other publication as an existing publication.
- (3)** A display order may specify the following publications—
- (a) a particular issue or issues of a named publication;
  - (b) all existing issues of a named publication;
  - (c) all future issues of a named publication;
  - (d) all future issues of a publication whose name is a derivative of a named publication;
  - (e) all future publications—
    - (i) whose cover indicates that the publication is a continuation or modification of, or a replacement for, the named publication; or
    - (ii) that, to the knowledge of the person displaying the publication, trades on the goodwill attaching to the name of the named publication (whether or not the publications have similar names).
- (4)** A display order must state the following—
- (a) the date the order commences;
  - (b) that it is an offence to contravene the order;
  - (c) the maximum penalty for a contravention of the order;
  - (d) the general effect of the defences provided under section 20C(2) and (3);<sup>4</sup>
  - (e) a person whose interests are adversely affected by the order may appeal against the order, or apply to have it lifted, under section 11D.
- (5)** Also, a display order—

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<sup>4</sup> Section 20C(2) provides a defence if the prohibited display is caused by someone else and the person takes certain precautions. Section 20C(3) provides a defence for certain persons who rely on a defect in the register of display orders.

- (a) must be published by the officer in a newspaper circulating throughout Queensland; and
- (b) commences on the date specified in the order being a date not less than 2 days after the day of publication in the newspaper.

(6) If a display order is made and the officer knows the identity of, and a way of communicating with, the distributor involved, the officer must promptly notify the distributor of the order.

### **Lifting of display order, and appeal rights and procedure**

**11D.(1)** A person whose interests are adversely affected by a display order may apply, in writing, to the chief executive to have the display order lifted.

(2) The application must—

- (a) state the applicant's name and address; and
- (b) show why the applicant is a person whose interests are adversely affected by the order; and
- (c) state the reasons why the order should be lifted; and
- (d) contain a statement of the intentions of the publisher of the publications affected by the order about the content of the covers of future publications affected by the order; and
- (e) contain a copy of each publication, issued in the previous year, that was affected by the display order.

(3) A display order may be lifted if the chief executive is satisfied, from the material in the application, that the order is no longer necessary to protect children or families.

(4) If the chief executive decides to lift a display order, the chief executive must promptly—

- (a) give the applicant written notice that the order has been lifted; and
- (b) publish notice in the gazette that the order has been lifted.

(5) If the application is refused, the chief executive must promptly give the applicant written reasons for the refusal.

(6) A person whose interests are adversely affected by a display order, or

a refusal to lift a display order, has the same right of appeal as is available under section 11<sup>5</sup> against a decision to classify a publication, and that section applies to the appeal with any changes necessary.

### **Register of display orders**

**11E.(1)** The chief executive must keep a computerised or other register of all current display orders including the terms of each order.

**(2)** A person may, on payment of the fee fixed under subsection (3)—

- (a) inspect the register during ordinary business hours; or
- (b) obtain a copy of part or all of the register.

**(3)** The fee must be an amount that—

- (a) the chief executive considers is reasonable; and
- (b) is not more than the reasonable cost of providing the inspection or copy.

## **PART 3—OFFENCES**

### **Sale etc. of prohibited publication or child abuse photograph**

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

Maximum penalty—

- (a) in the case of a restricted publication—50 penalty units or imprisonment for 3 months; or
- (b) in the case of an RC publication (other than a child abuse publication)—300 penalty units or imprisonment for 1 year; or

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<sup>5</sup> Section 11 (Appeal against classification by publications classification officer)

- (c) in the case of a child abuse publication or child abuse photograph—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 an RC 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 or child abuse photograph**

**14.** A person must not knowingly have possession of a child abuse publication or child abuse photograph.

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

### **Exhibition or display of prohibited publication or child abuse photograph**

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

- (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 an RC 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 or child abuse photograph—600 penalty units or imprisonment for 2 years.

### **Leaving prohibited publication or child abuse photograph in or on public place**

**16.** A person must not leave, or attempt to leave, a prohibited publication or child abuse photograph 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 an RC 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 or child abuse photograph—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 an RC 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 an RC 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 RC publication or child abuse photograph**

18. A person must not procure, or attempt to procure, a minor to be in any way concerned in the making or production of an RC publication or child abuse photograph.

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

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- (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 or child abuse photograph in or on private premises**

**20.** A person must not knowingly or recklessly leave, or attempt to leave, a prohibited publication or child abuse photograph 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 an RC 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 or child abuse photograph—300 penalty units or imprisonment for 1 year.

### **Offence to publish a publication classified unrestricted without its determined markings**

**20A.** A person must not publish, or attempt to publish, a publication



classified unrestricted unless it bears its determined markings.

Maximum penalty—25 penalty units.

**Offence to publish a publication with a misleading or deceptive marking**

**20B.** A person must not publish an unclassified publication with a marking indicating the publication is classified.

Maximum penalty—20 penalty units.

**Offence to contravene a display order for an unrestricted publication**

**20C.(1)** A person must not contravene a display order made under section 11B.<sup>6</sup>

Maximum penalty—5 penalty units.

**(2)** It is a defence for the person to prove that—

(a) either—

- (i) the prohibited display was caused by a customer, or someone else, not under the person's control; or
- (ii) if the display was caused by a person under the person's control—the person took reasonable steps to ensure the other person's compliance with the order; and

(b) the person followed a system for periodically taking action, throughout the trading day, to rectify prohibited displays at the place to which the charge relates.

**(3)** It is also a defence for the person to prove that the person relied on the omission of an order from, or other defect in, the register kept under section 11E not knowing, and not having reason to know, of the defect.

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<sup>6</sup> Section 11B (Protection of children and families by order prohibiting display of unrestricted publication unless certain parts of its cover are concealed)

## **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.<sup>7</sup>

**(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<sup>8</sup> 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.

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<sup>7</sup> Section 24 (General powers of inspector in relation to places)

<sup>8</sup> Section 25 (Monitoring warrants)

**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) subject to section 35,<sup>9</sup> the inspector may keep the evidence for 1 year 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<sup>10</sup> 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—

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<sup>9</sup> Section 35 (Return of seized publications or photographs)

<sup>10</sup> Section 26 (Offence related warrants)

- (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)<sup>11</sup> 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).

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<sup>11</sup> Section 22 (Entry and search—monitoring compliance)

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;<sup>12</sup> 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.

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<sup>12</sup> Section 24 (General powers of inspector in relation to places)

(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
- (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;<sup>13</sup> or
- (b) against another provision of this Act involving a child abuse publication or child abuse photograph;

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 or child abuse photograph, the court by or before which the person is convicted may, in addition to imposing any penalty, order that the publication, photograph or anything used in connection with the commission of the offence be forfeited.

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

### **Return of seized publications or photographs**

**35.(1)** An inspector who seizes a publication must, unless otherwise

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<sup>13</sup> Section 18 (Procurement of minor for RC publication or child abuse photograph)

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.

(3) An inspector who seizes a child abuse photograph must not return it to the person who is entitled to possession of it.

### **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 or child abuse photographs, subject to specified conditions (if any).

(2) An exemption may only be given for publications or photographs that are—

- (a) of a medical, educational or scientific character; or
- (b) intended to be used by the person or body for a medical, educational or scientific purpose.

(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 or photographs, in relation to which the exemption was given; and

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(b) the publications or photographs are not indecent or obscene publications or photographs 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 under 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—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.

### **Existing classifications**

**41.** A publication refused classification under this Act or the Commonwealth Act before the commencement of this section is taken to be a publication classified as RC under this Act or the Commonwealth Act, respectively, immediately after the commencement.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 3 July 1998. Future amendments of the Classification of Publications Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	9 December 1992
2	to Act No. 82 of 1993	19 January 1994
2A	to Act No. 51 of 1995	18 July 1996
2B	to Act No. 56 of 1996	15 January 1997

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed titles	2



## **6 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)

as amended by—

### **Consumer Law (Miscellaneous Provisions) Act 1993 No. 82 pts 1, 4, s 3 sch 1**

date of assent 17 December 1993

commenced on date of assent

### **Consumer Law (Miscellaneous Provisions) Act 1995 No. 1 pts 1, 4**

date of assent 3 March 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 17 April 1995 (1995 SL No. 89)

### **Statute Law (Minor Amendments) Act (No. 2) 1995 No. 51 ss 1, 4 sch**

date of assent 22 November 1995

commenced on date of assent

### **Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Act 1996 No. 56 pts 1, 7**

date of assent 20 November 1996

commenced on date of assent

### **Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 82 ss 1–2 pt 6**

date of assent 5 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1998 (1998 SL No. 76)

## **7 List of annotations**

**Long title** amd 1993 No. 82 s 18

### **Definitions**

**prov hdg** sub 1993 No. 82 s 19(1)

**s 3** def “**board**” ins 1996 No. 56 s 91(2)

def “**child abuse photograph**” ins 1993 No. 82 s 19(2)

amd 1997 No. 82 s 18

def “**child abuse publication**” amd 1996 No. 56 s 91(3); 1997 No. 82 s 18

def “**classification guidelines**” ins 1996 No. 56 s 91(2)

def “**classified**” amd 1996 No. 56 s 91(4)

def “**Code**” ins 1996 No. 56 s 91(2)

def “**Commonwealth Act**” ins 1996 No. 56 s 91(2)

def “**determined markings**” ins 1996 No. 56 s 91(2)

def “**director**” ins 1996 No. 56 s 91(2)

- def **“Ordinance”** om 1996 No. 56 s 91(1)
- def **“prohibited publication”** amd 1996 No. 56 s 91(5)
- def **“publish”** amd 1996 No. 56 s 91(6)
- def **“RC publication”** ins 1996 No. 56 s 91(2)
- def **“refused classification”** om 1996 No. 56 s 91(1)
- def **“restricted publication”** amd 1996 No. 56 s 91(7)
- def **“sell”** amd 1995 No. 1 s 14
- def **“submittable publication”** ins 1996 No. 56 s 91(2)
- def **“unrestricted publication”** amd 1996 No. 56 s 91(8)

**Classification under Commonwealth Act**

- prov hdg amd 1996 No. 56 s 92
- s 4 amd 1996 No. 56 s 92

**Delegation by publications classification officer**

- s 6A ins 1993 No. 82 s 20

**Approval of codes of conduct**

- s 7 amd 1993 No. 82 s 3 sch 1

**Classification of publications**

- s 9 amd 1996 No. 56 s 93

**Director’s power to require publisher to submit application for classification of a publication**

- s 9A ins 1996 No. 56 s 94

**Director’s power to require certain advertisements to be submitted for approval**

- s 9B ins 1996 No. 56 s 94

**Defence to prosecution under section 9A or 9B**

- s 9C ins 1996 No. 56 s 94

**PART 2A—PROTECTION OF CHILDREN AND FAMILIES BY CONDITIONS FOR DISPLAYING CERTAIN UNRESTRICTED PUBLICATIONS**

- pt 2A (ss 11A–11E) ins 1997 No. 82 s 19

**Sale etc. of prohibited publication or child abuse photograph**

- prov hdg amd 1993 No. 82 s 21(1)
- s 12 amd 1993 No. 82 s 21(2)–(3); 1996 No. 56 s 95

**Possession of prohibited publication**

- s 13 amd 1996 No. 56 s 96

**Possession of child abuse publication or child abuse photograph**

- s 14 sub 1993 No. 82 s 22

**Exhibition or display of prohibited publication or child abuse photograph**

- prov hdg amd 1993 No. 82 s 23(1)
- s 15 amd 1993 No. 82 s 23(2)–(3); 1996 No. 56 s 97

**Leaving prohibited publication or child abuse photograph in or on public place****prov hdg** amd 1993 No. 82 s 24(1)**s 16** amd 1993 No. 82 s 24(2)–(3); 1996 No. 56 s 98**Producing prohibited publication****s 17** amd 1996 No. 56 s 99**Procurement of minor for RC publication or child abuse photograph****prov hdg** amd 1993 No. 82 s 25(1)**s 18** amd 1993 No. 82 s 25(2); 1996 No. 56 s 100**Leaving prohibited publication or child abuse photograph in or on private premises****prov hdg** amd 1993 No. 82 s 26(1)**s 20** amd 1993 No. 82 s 26(2)–(3); 1996 No. 56 s 101**Offence to publish a publication classified unrestricted without its determined markings****s 20A** ins 1996 No. 56 s 102**Offence to publish a publication with a misleading or deceptive marking****s 20B** ins 1996 No. 56 s 102**Offence to contravene a display order for an unrestricted publication****s 20C** ins 1997 No. 82 s 20**Entry and search—evidence of offences****s 23** amd 1996 No. 56 s 103**Evidentiary provisions****s 32** amd 1996 No. 56 s 104**Indictable offences and summary offences****s 33** amd 1993 No. 82 s 27; 1996 No. 56 s 105**Forfeiture****s 34** amd 1993 No. 82 s 28**Return of seized publications or photographs****prov hdg** amd 1993 No. 82 s 29(1)**s 35** amd 1993 No. 82 s 29(2)**Exemptions****s 37** amd 1993 No. 82 s 30**Regulations****s 38** amd 1993 No. 82 s 3 sch 1**PART 6—SAVINGS AND TRANSITIONAL****pt hdg** amd R2 (see RA s 39)**Repeal of Acts****s 39** om R1 (see RA s 40)

**Existing classifications**

**s 41** ins 1995 No. 51 s 4 sch  
 exp 22 November 1996 (see s 41(5))  
 sub 1996 No. 56 s 106

**8 Table of corrected minor errors**

TABLE OF CORRECTED MINOR ERRORS  
 under the Reprints Act 1992 s 44

Provision	Description
33(1)(a)	om '188);' ins '18;8'